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*Speeches and Documents
in American History*

VOLUME IV
1914-1939

Selected and Edited by
ROBERT BIRLEY



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FOREWORD

This volume of documents will take its place as the fourth of a series illustrating American History from the Declaration of Independence to the opening of the present European War. The volumes with the earlier documents will contain prefaces intended to bring out certain points of particular interest to English readers.

This volume includes documents from President Wilson's speech on American neutrality, delivered on 19 August 1914, to President Franklin Roosevelt's address on a similar theme, broadcast on 3 September 1939. The majority of these documents are concerned with two great issues. The first is the fundamental problem of American foreign policy, the struggle between a traditional Isolationism, which had served America so well in the past, and a realization of the strength of her material and spiritual links with the Old World. The second is the great social and political adventure of the New Deal.

On 30 January 1933, Herr Hitler became Chancellor of the German Reich. Five weeks later Franklin Roosevelt became President of the United States. Two *opposing ways of life were soon made manifest*. Three years later the issue was clear enough and the President could say that the United States in its experiment of the New Deal was "fighting to save a great and precious form of government for ourselves *and for the world*".

I wish to express my very deep gratitude to Professor H. S. Commager of Columbia University. He has made it possible for me to overcome the great difficulties of the time by allowing me to make extensive use of his magnificent volume, *Documents of American History* (F. S. Crofts & Co., New York, second edition, 1940). The choice of documents and of the extracts from them in these volumes is, of course, my own, and in most cases my extracts from any document which is in both

selections will not be found to coincide with his. (In a few instances in earlier volumes, as I shall show, my debt is even greater.) But he has allowed me to make use of his texts in several cases where the exigencies of the time have made it impossible for me to refer to the original sources. As an amateur historian, I feel under a very great obligation to him.

I should like, too, to express my gratitude to the officers of the Oxford University Press for their encouragement and assistance. And I hope that this book may be taken especially as a tribute to the London Library—which to many of us means more in these days than ever before—and to its staff.

ROBERT BIRLEY

December 1941.

[The Constitution of the United States will be found in Volume I and the Amendments in their chronological sequence. Those clauses of the Constitution and Amendments referred to in this volume will be found in an Appendix on page 293.]

A GLOSSARY OF AMERICAN POLITICS

(Certain American political terms are explained in the notes on the several documents. References to these are given in the Indices.)

A.B.C. Powers. The Argentine Republic, Brazil, and Chile—the three most important South American States.

Abolitionists. See Index, Vol. II.

American Anti-Slavery Society. The most important organization of the Abolitionists, founded by Garrison in 1833.

American Colonization Society. An organization of Slaveholders who supported gradual emancipation of slaves by founding negro colonies. It founded a settlement for freed slaves in Liberia (West Africa) in 1827.

American Federation of Labor. See Index, Vol. III.

American Legion. The organization representing the combatants of the war against Germany of 1917-1918.

American Party. (See Know-nothing Party.)

American System. The name, first used by Henry Clay, for the policy of high protective duties and "internal improvements" (*q.v.*) to support American industries and farmers.

Anti-Mason Party. An ephemeral political party founded about 1830 to oppose the Masonic societies. It ran a presidential candidate in 1832.

Anti-Saloon League. See Index, Vol. IV.

Australian Ballot System. An attempt to overcome certain fraudulent practices in elections. Ballot papers, which contain on a single sheet the names of all candidates and are available only at the polling-booths, are printed by public officials, who supervise the elections.

Availability. A presidential candidate who has made few enemies, and is, therefore, often an obscure personage, is said to be "available."

Big Stick. See Index, Vol. III.

Black and Tan Convention. Name given to the Constitutional Convention of Virginia, which met on 3 December 1867, and which included twenty-five negroes out of a hundred and five members.

Bonus. Payment, sometimes known as "adjusted compensation," demanded by veterans of the war of 1917-1918.

- These were granted by Congress in 1924 and greatly increased in 1936.
- Boss.** The leader of the party organization in a city or other local district.
- Carpel-baggers.** Citizens of Northern States who came into the ex-Confederate States after the Civil War to organise elections in the Republican interest.
- Caucus.** The directing conferences of members of a particular party in the Senate and the House of Representatives, and similar party conferences in the State Legislatures.
- City Commissioners.** A small board elected to control the legislation and administration of a city. The system of government by a Commission was instituted in Galveston, Texas, in 1900, and has spread widely.
- City Manager System.** The administration of a city is placed in the hands of one man, who is elected to that position by a small Council or Commission elected by the citizens. This system was instituted at Sumter, South Carolina, in 1913, and has spread widely.
- Civilian Conservation Corps.** Bodies of young unemployed workers, set to works of general utility by the Civil Works Administration.
- Civil Works Administration.** An organization set up under the National Recovery Act of 1933 to provide public work for the unemployed.
- Closed Primary.** A primary (*q.v.*) in which steps are taken to see that voters are actually members of the party for whose candidates they are voting.
- Committee for Industrial Organization (C.I.O.).** A labour union, founded by John Lewis in 1936, which organized particularly the unskilled workers. It has been in violent competition with the American Federation of Labor. Its name was changed to "Congress of Industrial Organizations."
- Conservatives.** Those members of the Republican Party who opposed the Congressional policy of Reconstruction after the war.
- Constitutional Union Party.** Name adopted by the Republican Party during the Civil War to cover its alliance with the War Democrats.
- Contrabands.** Negro slaves who escaped to the North from the outbreak of the Civil War. General Butler first declared them to be "contraband of war" and they were formed into labour battalions.
- Copperheads.** The Democrats of the Northern States who

- opposed the Civil War. (From a kind of poisonous snake.)
- County.* The chief administrative subdivision of a State. They vary greatly from State to State in size and in their administrative importance.
- Dark Horse.* A candidate at a National Convention (*q.v.*) who is not widely known.
- Democratic Party.* The name given by its opponents to the Republican Party of Jefferson's supporters. Accepted by Jackson when he stood for the Presidency in 1828.
- Direct Primary.* A primary (*q.v.*) held under public supervision before an election to enable the party voters to choose the candidates of the party at an election.
- Dust Bowl.* The arid western regions of the Great Plains where over-cultivation has led to extensive erosion of the soil.
- Essex Junto.* The Federalists in Massachusetts, mainly the members and supporters of the leading families, who came from Essex County.
- Farmers' Alliances.* Political parties of farmers which arose during the eighteen-eighties. They merged eventually into the Populist Party.
- Farm-Labor Party.* A radical agrarian party which ran candidates at the presidential elections of 1920, 1928, and 1932.
- Favorite.* A candidate at a National Convention (*q.v.*) who is well known throughout the United States.
- Favorite Son.* A candidate at a National Convention (*q.v.*) who is the protégé of a particular State, but is not well known outside it.
- Federal Emergency Relief Administration.* Set up in May 1933 to direct emergency relief to States during the depression.
- Federalists.* Name taken by the supporters of the Constitution during the period when the States were ratifying the Constitution and subsequently by the followers of Alexander Hamilton. After their defeat in 1800 the party gradually disappeared.
- Federal Trade Commission.* A commission of five set up by the Federal Trade Commission Act of 1914 to investigate violations of anti-trust laws and unfair practices in inter-state commerce.
- Filibustering.* An attempt to obstruct the passage of legislation by the undue use of parliamentary privileges in debate, especially by making long and irrelevant speeches. It

was made difficult in the House of Representatives in 1890, but is still commonly employed in the Senate. A filibuster means a buccaneer.

Floor Leader. A member of the party in the Senate of the House of Representatives whose business is to manage the party's contribution to debates and to enforce party discipline.

Free Soil Party. A political party formed out of various Abolitionist factions, which nominated Van Buren, an ex-President, as presidential candidate in 1848. They were merged in the new Republican party after 1852.

General Ticket. System under which a State votes as a whole, not by districts, for the presidential electors.

Gerrymander. The creation by the party in power of electoral districts unequal in size or population in order to make the most use of the votes likely to be cast for that party in an election. The term was derived from Elbridge Gerry, a Massachusetts Democrat, who redistributed the electoral districts of the State in this way. Someone seeing a map of these districts said that one of them looked like a salamander, and was answered, "Say rather a gerrymander."

Gold Democrats. Those members of the Democratic Party who opposed the proposal for free silver in the party programme of 1896.

Governor. The chief Executive of a State. All Governors, except in Mississippi, are elected by direct popular vote; in twenty-four States for four years, in one for three years, and in twenty-three for two years. The powers and functions of the Governor vary considerably in the different States.

Grand Army of the Republic. The organization which pressed the claims, especially political, of the veterans of the Federal Army of the Civil War.

Grandfather Clause. See Index, Vol. III.

Granges. Societies of farmers, formed in the eighteen-seventies, to press for agrarian reforms, political and economic.

Granger Laws. Laws passed at the instigation of the Granges to check abuses in railways and warehouses which affected the farmers' interests.

Greenback. Legal tender notes, first authorized by Congress in 1862.

Greenback Party. A political party, chiefly of the agrarian interests, which demanded that the Government should meet its obligations with Greenbacks. They nominated

presidential candidates in 1876, 1880, and 1884, and were eventually merged in the Populist Party.

Industrial Workers of the World. The most extreme American labour organization, founded in 1905. It suffered severely in the "red scare" of 1918 and 1919.

Initiative. See Index, Vol. III.

Insular Cases. A number of cases before the Supreme Court which decided the constitutional position of the possessions gained in the Spanish War.

Internal Improvements. Improvements in transport routes, roads, canals, and later railways, undertaken at federal expense.

Interstate Commerce Commission. See Index, Vol. III.

Knights of Columbus. A Roman Catholic social organization with considerable political influence.

Knights of Labor. See Index, Vol. III.

Know-Nothing Party. A political party (later called the American Party), standing for opposition to immigrants and Roman Catholics, which appeared in 1854. Its candidate, ex-President Fillmore, won eight electoral votes in 1856.

Ku Klux Klan. For the first Ku Klux Klan see Index, Vol. III. A second organisation was founded in the Southern States after the war of 1917-1918 to combat, in particular, Roman Catholicism.

Lame Ducks. See Index, Vol. IV.

Liberty Party. An Abolitionist political party, originated in New York, which ran a candidate in the presidential elections of 1840 and 1844.

Logrolling. Bargaining between politicians to secure co-operation to assist in passing legislation in their particular interests. The term comes from the practice of frontiersmen co-operating to fell trees and pile the logs.

Machine. The party organization in a district.

Mason-Dixon Line. See Index, Vol. II.

Monroe Doctrine. See Index, Vol. II.

Mugwumps. Those members of the Republican Party who refused to accept the candidature of Blaine for the Presidency in 1884 and went over to the Democrats. From the translation of the phrase "great captain" in Eliot's Indian Bible.

National Committee. The organizing committee of a political party, one of whose main tasks is to manage the National Convention (*q.v.*). It is elected every four years at the end of the National Convention.

National Convention. The convention of a political party at which the presidential and vice-presidential candidates are selected and the platform for the election drawn up. It is held in the June or July preceding the election in November.

National Labor Relations Board. See Index, Vol. IV.

National Primary. The primary (*q.v.*) of the State organizations of a party for the National Convention (*q.v.*).

National Recovery Administration. See Index, Vol. IV.

National Republican Party. See Whigs.

National Union Party. The name taken by the Republican Party during the Civil War to cover the alliance with the War Democrats.

New Deal. Name given to the policy of reform carried out by President Franklin Roosevelt and the Democratic Party since 1933.

New Freedom. Name given to the policy of reform carried out by President Wilson and the Democratic Party after his election in 1912.

Non-Partisan League. An agrarian party which flourished in the last years of the nineteenth century, particularly in the Dakotas.

Omnibus States. Six western States, Idaho, Montana, North and South Dakota, Washington, and Wyoming, which became States in 1889 and 1890.

Open Primary. The system of organizing a primary (*q.v.*) under which any voter may participate whether or not he is a member of the party.

Pocket Veto. When the President withholds his signature to a Bill, though not actually vetoing it, and the session of Congress comes to an end before the ten days in which he may return it, the Bill does not become law.

Populist Party. See Index, Vol. III.

Pork-barrel. Bills in Congress making appropriations for local districts, supported by the member representing that district in order to gain favour with his constituents. From the pork-barrel, the contents of which used by custom to be distributed at certain times to the negroes on the slave estates of the South.

Primary. The election within a political party of candidates to be nominated in an election. In all States these primary elections are now regulated by State legislation.

Progressive Party—

(i) The party formed by the followers of Theodore Roosevelt in 1912.

(ii) The party formed for the presidential election of 1924 to support the candidature of Senator La Follette. (Its full name was the Conference for Progressive Political Action.)

Public Works Administration. See Index, Vol. IV.

Recall. See Index, Vol. III.

Reconstruction Finance Corporation. A body set up in 1932 to aid farmers by export agencies and the extension of credit.

Referendum. See Index, Vol. III.

Republican Party. (i) The political party supporting Jefferson in the early years of the Republic. After the disappearance of the Federalist Party it began to disintegrate, and in 1828 the faction which supported Jackson took the name of Democrats, which had always also been applied to the party, at first in derision.

(ii) The political party formed in 1854 after the passage of the Kansas-Nebraska Act. Based at first on opposition to Slavery, it soon absorbed the various Abolitionist parties and in a few years most of the Whigs (*q.v.*) in the Northern States.

Riders. Measures attached to appropriation bills, which the President cannot veto, in order to overcome a threatened veto.

Rings. Combinations of politicians of one party in a district to control and organize the party in that district and the power and patronage it may wield.

Rules Committee. The Committee of the House of Representatives which decides the order in which bills shall be debated, and how long the debate shall last.

Scalawag. A renegade. Name given to Republican supporters in Southern States during the period of Reconstruction.

Sheriff. The chief police officer of a county (*q.v.*) elected by popular vote, except in Rhode Island, where he is appointed by the Governor.

Short Ballot. A system by which only a limited number of officials are elected by popular vote on one voting paper.

Silver Democrats. Those members of the Democratic Party who supported the policy of free silver, especially under the leadership of W. J. Bryan, in the presidential election of 1896.

Slip Ticket. A list, printed on a long strip of paper, of the persons, all belonging to one party, recommended by the party politicians for election to the large number of positions filled by popular vote. The ticket would be accepted as a whole, and used as a voting paper. The

abuse of this system led to the reforms of the Australian Ballot (*q.v.*) and the Short Ballot (*q.v.*).

Social Security Board. See Index, Vol. IV.

Speaker. The Speaker of the House of Representatives, who presides over its debates, is an active party politician, and exercises considerable influence over the course of the debates in the interest of the party in the majority.

Spoils System. See Index, Vols. II and III.

State Convention. A party convention composed of delegates from local districts, who nominate candidates for State elections. Connecticut, Rhode Island, and New Mexico are the only States in which these conventions are now allowed, but in others a State Convention is held to select the delegates to the National Convention (*q.v.*).

Steering Committee. A committee of the members of a party in the House of Representatives who take general control of the actions of the party in the House.

Tammany Hall. The most famous of the political machines, that of the Democratic Party in New York. Founded during the eighteenth century, it was at first a social organization. It supported the Jeffersonian Republicans in the election of 1800 and gained control of the party machine in New York City within the next thirty years. Though its power is not what it was, it still has to be reckoned with.

Tennessee Valley Administration. See Index, Vol. IV.

Township. An area of local government. In New England, where the term used is Town, it forms an area of some twenty to forty square miles. In some of the Southern States the system of the Township has been introduced but is not of such importance. In the Middle and Western States the system exists, but the administrative importance of the Township varies, being much greater in those States which received a large proportion of immigrants from New England.

Underground Railway. The Abolitionist organization which enabled fugitive slaves to escape to Canada.

Union Leagues. Founded in Northern cities during the Civil War to sustain warlike enthusiasm. After the war they were formed in the South to organize the Republican voters, of whom many were negroes. They were often called Loyal Leagues.

Veterans. A general name for ex-soldiers and sailors of the War of 1917-1918, including many thousands who had never crossed the Atlantic.

War Democrats. Members of the Democratic Party in the Northern and Border States who supported the Union in the Civil War.

War Hawks. See Index, Vol. II.

Whigs. The opponents of Jackson, who nominated Henry Clay as candidate for the presidential election of 1832, took the title of National Republicans, which was soon changed to Whigs. The party disintegrated after a severe defeat in 1852.

Women's Christian Temperance Union. See Index, Vol. IV.

Workingmen's Party. The first American labour party, founded in Philadelphia in 1828. It had a great success in the New York City Elections of 1829, but broke up soon afterwards.

Works Progress Administration. See Index, Vol. IV.

1. WILSON'S NEUTRALITY MESSAGE TO THE SENATE

19 AUGUST 1914

[At the outbreak of the War of 1914-1918 Wilson issued a formal Proclamation of Neutrality on 4 August. On 19 August he sent a message to the Senate appealing to Americans to be "impartial in thought as well as in action." This message should be compared with President Franklin Roosevelt's broadcast address of 12 September 1939 (No. 49).]

My fellow countrymen: I suppose that every thoughtful man in America has asked himself, during these last troubled weeks, what influence the European war may exert upon the United States, and I take the liberty of addressing a few words to you in order to point out that it is entirely within our own choice what its effects upon us will be and to urge very earnestly upon you the sort of speech and conduct which will best safeguard the Nation against distress and disaster.

The effect of the war upon the United States will depend upon what American citizens say and do. Every man who really loves America will act and speak in the true spirit of neutrality, which is the spirit of impartiality and fairness and friendliness to all concerned. The spirit of the Nation in this critical matter will be determined largely by what individuals and society and those gathered in public meetings do and say, upon what newspapers and magazines contain, upon what ministers utter in their pulpits, and men proclaim as their opinions on the street.

The people of the United States are drawn from many nations, and chiefly from the nations now at war. It is natural and inevitable that there should be the utmost variety of sympathy and desire among them with regard to the issues and circumstances of the

conflict. Some will wish one nation, others another, to succeed in the momentous struggle. It will be easy to excite passion and difficult to allay it. Those responsible for exciting it will assume a heavy responsibility, responsibility for no less a thing than that the people of the United States, whose love of their country and whose loyalty to its Government should unite them as Americans all, bound in honor and affection to think first of her and her interests, may be divided in camps of hostile opinion, hot against each other, involved in the war itself in impulse and opinion if not in action.

Such divisions amongst us would be fatal to our peace of mind and might seriously stand in the way of the proper performance of our duty as the one great nation at peace, the one people holding itself ready to play a part of impartial mediation and speak the counsels of peace and accommodation, not as a partisan, but as a friend.

I venture, therefore, my fellow countrymen, to speak a solemn word of warning to you against that deepest, most subtle, most essential breach of neutrality which may spring out of partisanship, out of passionately taking sides. The United States must be neutral in fact as well as in name during these days that are to try men's souls. *We must be impartial in thought as well as in action, must put a curb upon our sentiments as well as upon every transaction that might be construed as a preference of one party to the struggle before another.*

My thought is of America. I am speaking, I feel sure, the earnest wish and purpose of every thoughtful American, that this great country of ours, which is, of course, the first in our thoughts and in our hearts, should show herself in this time of peculiar trial a Nation fit beyond others to exhibit the fine poise of undisturbed judgment, the dignity of self-control, the efficiency of dispassionate action; a Nation that neither sits in judgment upon others nor is disturbed in her own counsels and which keeps herself fit and free to do what

is honest and disinterested and truly serviceable for the peace of the world.

Shall we not resolve to put upon ourselves the restraints which will bring to our people the happiness and the great and lasting influence for peace we covet for them?

2. THE CLAYTON ANTI-TRUST ACT

15 OCTOBER 1914

[This was one of the most important Acts in Wilson's reforming programme, inaugurated when he became President in 1913. It was intended to repair the failings of the Sherman Anti-Trust Act of 1890. (See Vol. III.) It specifically prohibited the acquisition by corporations of stock in competing businesses; "interlocking" directorates in large banks and corporations; and discriminations in price in order to secure monopolies. Labour unions were exempted under the terms of the Act, and Injunctions in labour disputes forbidden "unless necessary to prevent irreparable damage to property."

The Act did not fulfil what was expected of it. During the war it was tacitly suspended, and the Republican governments after the war made little use of it. The Supreme Court in the case of *Duplex Printing Press Company v. Deering* (1921) showed that the Act could do little to overcome the use of Injunctions as a weapon in a strike or boycott.]

. . . SEC. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities which commodities are sold for use, consumption, or resale within the United States or any . . . other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce. . . .

SEC. 3. That it shall be unlawful for any person engaged in commerce, to lease or make a sale of goods, . . . or other commodities, . . . for use, consumption or resale within the United States or . . . other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, . . . that the lessee or purchaser thereof shall not use or deal in the goods, . . . or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce. . . .

SEC. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws.

SEC. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce. . . .

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. . . .

SEC. 8. That from and after two years from the date of the approval of this act no person shall at the same time be a director or other officer or employee of more than one bank, banking association, or trust company, organized or operating under the laws of the United States, either of which has deposits, capital, surplus, and undivided profits aggregating more than \$5,000,000; and no private banker or person who is a director in any bank or trust company, organized and operating under the laws of a State, having deposits, capital, surplus, and undivided profits aggregating more than \$5,000,000, shall be eligible to be a director in any bank or banking association organized or operating under the laws of the United States. . . .

That from and after two years from the date of the approval of this Act no person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than \$1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies and common carriers subject to the Act to regulate commerce, approved 4 February 1887, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the anti-trust laws. . . .

SEC. 10. That after two years from the approval of this Act no common carrier engaged in commerce shall have any dealings in securities, supplies, or other articles of commerce, . . . to the amount of more than \$50,000, in the aggregate, in any one year, with another corporation, firm, partnership or association when the said common carrier shall have upon its board of directors or as its president, manager, or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager, or purchasing or selling officer of, or who has any substantial interest in, such other corporation, firm, partner-

ship, or association, unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such common carrier, to be ascertained by competitive bidding under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission. . . .

SEC. 20. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with a particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered

or held to be violations of any law of the United States.

3. THE FIRST LUSITANIA NOTE

13 MAY 1915

[On 4 February 1915, Germany began her indiscriminate submarine warfare against Great Britain by announcing that all the waters round the British Isles constituted a zone of warfare in which all ships trading with the Allies might be sunk. On 10 February, Wilson sent a note to the German Government stating that the United States would hold them responsible for American property endangered or lives lost as a result of this new policy. On 28 March the first American citizen was drowned on a British ship; on 28 April an American ship was attacked by a German aeroplane; on 1 May an American tanker was torpedoed; and on 7 May the Cunard liner, *Lusitania*, was sunk off Ireland with the loss of 128 Americans. The German Embassy had warned Americans not to sail on the liner, which carried munitions, but the torpedoing was carried out without warning and nothing was done to help the passengers to safety.

On 13 May a note, actually written by Wilson, was sent to Germany demanding reparation and the discontinuance of the submarine blockade. Germany raised the point that the *Lusitania* was carrying munitions, but a second note was sent by the United States demanding the abandonment of a practice of war which jeopardised the lives of non-belligerents on merchant ships of belligerent nationality. The controversy was long drawn out, and on 19 August the British liner *Arabic* was sunk with the loss of two American citizens. A rupture appeared inevitable, but in September the Germans accepted the American terms.]

The Secretary of State to Ambassador Gerard.

DEPARTMENT OF STATE,
WASHINGTON, 13 May 1915.

Please call on the Minister of Foreign Affairs and after reading to him this communication leave with him a copy.

In view of recent acts of the German authorities in violation of American rights on the high seas which culminated in the torpedoing and sinking of the British steamship *Lusitania* on 7 May 1915, by which over 100 American citizens lost their lives, it is clearly wise and desirable that the Government of the United States and the Imperial German Government should come to a clear and full understanding as to the grave situation which has resulted.

The sinking of the British passenger steamer *Falaba* by a German submarine on 28 March, through which Leon C. Thrasher, an American citizen, was drowned; the attack on 28 April on the American vessel *Cushing* by a German aeroplane; the torpedoing on 1 May of the American vessel *Gulflight* by a German submarine, as a result of which two or more American citizens met their death; and, finally, the torpedoing and sinking of the steamship *Lusitania*, constitute a series of events which the Government of the United States has observed with growing concern, distress, and amazement.

Recalling the humane and enlightened attitude hitherto assumed by the Imperial German Government in matters of international right, and particularly with regard to the freedom of the seas; having learned to recognize the German views and the German influence in the field of international obligation as always engaged upon the side of justice and humanity; and having understood the instructions of the Imperial German Government to its naval commanders to be upon the same plane of humane action prescribed by the naval codes of other nations, the Government of the United States was loath to believe—it cannot now bring itself to believe—that these acts, so absolutely contrary to the rules, the practices, and the spirit of modern warfare, could have the countenance or sanction of that great Government. It feels it to be its duty, therefore, to address the Imperial German Government concerning them with the utmost frankness and in the earnest hope that it is not mistaken in expecting action on the part of the Imperial German Government which will correct

the unfortunate impressions which have been created and vindicate once more the position of that Government with regard to the sacred freedom of the seas.

The Government of the United States has been apprised that the Imperial German Government considered themselves obliged by the extraordinary circumstances of the present war and the measures adopted by their adversaries in seeking to cut Germany off from all commerce, to adopt methods of retaliation which go much beyond the ordinary methods of warfare at sea, in the proclamation of a war zone from which they have warned neutral ships to keep away. This Government has already taken occasion to inform the Imperial German Government that it cannot admit the adoption of such measures or such a warning of danger to operate as in any degree an abbreviation of the rights of American shipmasters or of American citizens bound on lawful errands as passengers on merchant ships of belligerent nationality; and that it must hold the Imperial German Government to a strict accountability for any infringement of those rights, intentional or incidental. It does not understand the Imperial German Government to question those rights. It assumes, on the contrary, that the Imperial Government accept, as of course, the rule that the lives of noncombatants, whether they be of neutral citizenship or citizens of one of the nations at war, cannot lawfully or rightfully be put in jeopardy by the capture or destruction of an unarmed merchantman, and recognize also, as all other nations do, the obligation to take the usual precaution of visit and search to ascertain whether a suspected merchantman is in fact of belligerent nationality or is in fact carrying contraband of war under a neutral flag.

The Government of the United States, therefore, desires to call the attention of the Imperial German Government with the utmost earnestness to the fact that the objection to their present method of attack against the trade of their enemies lies in the practical impossibility of employing submarines in the destruction of commerce without disregarding those rules of fairness,

reason, justice, and humanity which all modern opinion regards as imperative. It is practically impossible for the officers of a submarine to visit a merchantman at sea and examine her papers and cargo. It is practically impossible for them to make a prize of her; and, if they cannot put a prize crew on board of her, they cannot sink her without leaving her crew and all on board of her to the mercy of the sea in her small boats. These facts it is understood the Imperial German Government frankly admit. We are informed that in the instances of which we have spoken time enough for even that poor measure of safety was not given, and in at least two of the cases cited not so much as a warning was received. Manifestly submarines cannot be used against merchantmen, as the last few weeks have shown, without an inevitable violation of many sacred principles of justice and humanity.

American citizens act within their indisputable rights in taking their ships and in traveling wherever their legitimate business calls them upon the high seas, and exercise those rights in what should be the well-justified confidence that their lives will not be endangered by acts done in clear violation of universally acknowledged international obligations, and certainly in the confidence that their own Government will sustain them in the exercise of their rights.

There was recently published in the newspapers of the United States, I regret to inform the Imperial German Government, a formal warning, purporting to come from the Imperial German Embassy at Washington, addressed to the people of the United States, and stating, in effect, that any citizen of the United States who exercised his right of free travel upon the seas would do so at his peril if his journey should take him within the zone of waters within which the Imperial German Navy was using submarines against the commerce of Great Britain and France, notwithstanding the respectful but very earnest protest of his Government, the Government of the United States. I do not refer to this for the purpose of calling the attention of

the Imperial German Government at this time to the surprising irregularity of a communication from the Imperial German Embassy at Washington addressed to the people of the United States through the newspapers, but only for the purpose of pointing out that no warning that an unlawful and inhumane act will be committed can possibly be accepted as an excuse or palliation for that act or as an abatement of the responsibility for its commission.

Long acquainted as this Government has been with the character of the Imperial German Government and with the high principles of equity by which they have in the past been actuated and guided, the Government of the United States cannot believe that the commanders of the vessels which committed these acts of lawlessness did so except under a misapprehension of the orders issued by the Imperial German naval authorities. It takes it for granted that, at least within the practical possibilities of every such case, the commanders even of submarines were expected to do nothing that would involve the lives of noncombatants or the safety of neutral ships, even at the cost of failing of their object of capture or destruction. It confidently expects, therefore, that the Imperial German Government will disavow the acts of which the Government of the United States complains, *that they will make reparation so far as reparation is possible for injuries which are without measure*, and that they will take immediate steps to prevent the recurrence of anything so obviously subversive of the principles of warfare for which the Imperial German Government have in the past so wisely and so firmly contended.

The Government and people of the United States look to the Imperial German Government for just, prompt, and enlightened action in this vital matter with the greater confidence because the United States and Germany are bound together not only by special ties of friendship but also by the explicit stipulations of the treaty of 1828 between the United States and the Kingdom of Prussia.

Expressions of regret and offers of reparation in the case of the destruction of neutral ships sunk by mistake, while they may satisfy international obligations, if no loss of life results, cannot justify or excuse a practice, the natural and necessary effect of which is to subject neutral nations and neutral persons to new and immeasurable risks.

The Imperial German Government will not expect the Government of the United States to omit any word or any act necessary to the performance of its sacred duty of maintaining the rights of the United States and its citizens and of safeguarding their free exercise and enjoyment.

4. ELIHU ROOT: SPEECH TO THE NEW YORK CONSTITUTIONAL CONVENTION

30 AUGUST 1915

[In the summer of 1915 a Convention was held in New York State to draw up a new Constitution for the State. The President of the Convention was Mr Elihu Root, a famous Republican statesman, who had been Secretary of War from 1899 to 1904 and Secretary of State from 1905 to 1909. He played a considerable part in the Convention in support of various reforms to diminish the power of the political machines. In a famous speech on 30 August 1915 he supported the principle of the "short ballot" and analysed the nature of the rule of the political "bosses," or "the invisible government."]

Mr Chairman, I have had great doubt whether or not I should impose any remarks on this bill upon the Convention, especially after my friend Mr Quigg has so ingeniously made it difficult for me to speak; but I have been so long deeply interested in the subject of the bill, and I shall have so few opportunities hereafter, perhaps never another, that I cannot refrain from testifying to

my faith in the principles of government which underlie the measure, and putting upon this record, for whatever it may be worth, the conclusions which I have reached upon the teachings of long experience in many positions, through many years of participation in the public affairs of this State and in observation of them. . . .

I wish in the first place to say something suggested by the question of my friend, Mr Brackett, as to where this short ballot idea came from. It came up out of the dark, he says. . . .

In 1913, after the great defeat of 1912, when the Republicans of the State were seeking to bring back to their support the multitudes that had gone off with the Progressive movement; when they were seeking to offer a program of constructive forward movement in which the Republican party should be the leader, Republicans met in a great mass meeting in the city of New York, on the fifth of December of that year, 1913.

Nine hundred and seventy Republicans were there from all parts of the State. It was a crisis in the affairs of the Republican party. The party must commend itself to the people of the State, or it was gone. Twenty-eight members of this Convention were there, and in that meeting, free to all, open to full discussion, after amendments had been offered, discussed, and voted upon, this resolution was adopted:

WHEREAS, This practice [referring to the long ballot] is also in violation of the best principles of organization which require that the governor, who under the constitution is the responsible chief executive should be so in fact, and that he should have the power to select his official agents;

Therefore, be it *Resolved*, that we favor the application to the State government of the principle of the short ballot, which is that only those offices should be elective which are important enough to attract (and deserve) public examination.

And be it further *Resolved*, that, in compliance with this principle, we urge the representatives of the

Republican party of this State, in the Senate and Assembly, to support a resolution providing for the submission to the people of an amendment to the constitution, under which amendment it will be the duty of the governor to appoint the secretary of state, the state treasurer, the comptroller, the attorney-general, and the state engineer and surveyor, leaving only the governor and lieutenant-governor as elective state executive officers.

That resolution, I say, after full discussion was unanimously adopted by the nine hundred and seventy representative Republicans who had met there to present to the people of the State a constructive program for the party. . . .

The governments of our cities? Why, twenty years ago, when James Bryce wrote his *American Commonwealth*, the government of American cities was a by-word and a shame for Americans all over the world. Heaven be thanked, the government of our cities has now gone far toward redeeming itself and us from that disgrace, and the government of American cities to-day is in the main far superior to the government of American States. I challenge contradiction to that statement. How has it been reached? How have our cities been lifted up from the low grade of incompetency and corruption on which they stood when the *American Commonwealth* was written? It has been done by applying the principles of this bill to city government, by giving power to the men elected by the people to do the things for which they were elected. But I say it is quite plain that that is not all. It is not all.

I am going to discuss a subject now that goes back to the beginning of the political life of the oldest man in this Convention, and one to which we cannot close our eyes if we keep the obligations of our oath. We talk about the government of the Constitution. We have spent many days in discussing the powers of this and that and the other officer. What is the government of this State? What has it been during the forty years of my acquaintance with it? The government of the Con-

stitution? Oh, no; not half the time, or half way. When I ask what do the people find wrong in our State government, my mind goes back to those periodic fits of public rage in which the people rouse up and tear down the political leader, first of one party and then of the other party. It goes on to the public feeling of resentment against the control of party organizations, of both parties and of all parties.

Now, I treat this subject in my own mind not as a personal question to any man. I am talking about the system. From the days of Fenton, and Conkling, and Arthur and Cornell, and Platt, from the days of David B. Hill, down to the present time the government of the State has presented two different lines of activity, one of the constitutional and statutory officers of the State, and the other of the party leaders—they call them party bosses. They call the system—I don't coin the phrase, I adopt it because it carries its own meaning—the system they call "invisible government." For I don't remember how many years, Mr Conkling was the supreme ruler in this State; the Governor did not count; the legislatures did not count; comptrollers and secretaries of state and what not, did not count. It was what Mr Conkling said, and in a great outburst of public rage he was pulled down.

Then Mr Platt ruled the State; for nigh upon twenty years he ruled it. It was not the Governor; it was not the Legislature; it was not any elected officers; it was Mr Platt. And the Capitol was not here; it was at 49 Broadway—Mr Platt and his lieutenants. It makes no difference what name you give, whether you call it Fenton or Conkling or Cornell or Arthur or Platt, or by the names of men now living. The ruler of the State during the greater part of the forty years of my acquaintance with the State government has not been any man authorized by the Constitution or by the law; and, sir, there is throughout the length and breadth of this State a deep and sullen and long-continued resentment at being governed thus by men not of the people's choosing. The party leader is elected by no one, accountable to

no one, bound by no oath of office, removable by no one. Ah! My friends here have talked about this bill's creating an autocracy. The word points with admirable facility the very opposite reason for the bill. It is to destroy autocracy and restore power so far as may be to the men elected by the people, accountable to the people, removable by the people. I don't criticise the men of the invisible government. How can I? I have known them all, and among them have been some of my dearest friends. I can never forget the deep sense of indignation that I felt in the abuse that was heaped upon Chester A. Arthur, whom I honored and loved, when he was attacked because he held the position of political leader. But it is all wrong. It is all wrong that a government not authorized by the people should be continued superior to the government that is authorized by the people.

How is it accomplished? How is it done? Mr Chairman, it is done by the use of patronage, and the patronage that my friends on the other side of this question have been arguing and pleading for in this Convention is the power to continue that invisible government against that authorized by the people. Everywhere, sir, that these two systems of government co-exist, there is a conflict day by day, and year by year, between two principles of appointment to office, two radically opposed principles. The elected officer or the appointed officer, the lawful officer who is to be held responsible for the administration of his office, desires to get men into the different positions of his office who will do their work in a way that is creditable to him and his administration. Whether it be a president appointing a judge, or a governor appointing a superintendent of public works, whatever it may be, the officer wants to make a success, and he wants to get the man selected upon the ground of his ability to do the work.

How is it about the boss? What does the boss have to do? He has to urge the appointment of a man whose appointment will consolidate his power and preserve the organization. The invisible government proceeds to

build up and maintain its power by a reversal of the fundamental principle of good government, which is that men should be selected to perform the duties of the office; and to substitute the idea that men should be appointed to office for the preservation and enhancement of power of the political leader. The one, the true one, looks upon appointment to office with a view to the service that can be given to the public. The other, the false one, looks upon appointment to office with a view to what can be gotten out of it. Gentlemen of the convention, I appeal to your knowledge of facts. Every one of you knows that what I say about the use of patronage under the system of invisible government is true. Louis Marshall told us the other day about the appointment of wardens in the Adirondacks, hotel keepers and people living there, to render no service whatever. They were appointed not for the service that they were to render to the State; they were appointed for the service they were to render to promote the power of a political organization. Mr Chairman, we all know that the halls of this capitol swarm with men during the session of the Legislature on pay day. A great number, seldom here, rendering no service, are put on the payrolls as a matter of patronage, not of service, but of party patronage. Both parties are alike; all parties are alike. The system extends through all. Ah, Mr Chairman, that system finds its opportunity in the division of powers, in a six-headed executive, in which, by the natural workings of human nature there shall be opposition and discord and the playing of one force against the other, and so, when we refuse to make one Governor elected by the people the real chief executive, we make inevitable the setting up of a chief executive not selected by the people, not acting for the people's interest, but for the selfish interest of the few who control the party, whichever party it may be. Think for a moment of what this patronage system means. How many of you are there who would be willing to do to your private client, or customer, or any private trust, or to a friend or neighbor, what you see

being done to the State of New York every year of your lives in the taking of money out of her treasury without service? We can, when we are in a private station, pass on without much attention to inveterate abuses. We can say to ourselves, I know it is wrong; I wish it could be set right; it cannot be set right; I will do nothing. But here, here, we face the duty, we cannot escape it, we are bound to do our work, face to face, in clear recognition of the truth, unpalatable, deplorable as it may be; and the truth is, that what the unerring instinct of the democracy of our State has seen in this government is that a different standard of morality is applied to the conduct of affairs of States than that which is applied in private affairs. I have been told forty times since this Convention met that you cannot change it. We can try, can't we? I deny that we cannot change it. I repel that cynical assumption which is born of the lethargy that comes from poisoned air during all these years. I assert that this perversion of democracy, this robbing democracy of its virility, can be changed as truly as the system under which Walpole governed the Commons of England, by bribery, as truly as the atmosphere which made the *credit mobilier* scandal possible in the Congress of the United States has been blown away by the force of public opinion. We cannot change it in a moment, but we can do our share. We can take this one step toward, not robbing the people of their part in government, but toward robbing an irresponsible autocracy of its indefensible and unjust and undemocratic control of government, and restoring it to the people to be exercised by the men of their choice and their control. . . .

5. THE GORE-McLEMORE RESOLUTION

MARCH 1916

[W. J. Bryan resigned from the position of Secretary of State rather than sign the second *Lusitania* note. He advocated the renunciation by the American Government of responsibility for her citizens who sailed in the ships of belligerents. In February 1916 the German Government gave warning that unrestricted submarine warfare would be resumed on 1 March. Certain Democratic leaders then urged the adoption of Bryan's policy and proposed the so-called Gore-McLemore Resolution calling on American citizens not to sail in the armed merchant ships of belligerent Powers. Wilson in a letter to Senator Stone declared that he could not consent to any abridgment of the rights of American citizens in any respect, and that the abandonment of such rights would be "an implicit, all but an explicit, acquiescence in the violation of the rights of mankind everywhere." Eventually, in March 1916, the Resolution was defeated both in the Senate and in the House.

This proposal foreshadows the attitude taken up by the United States at the beginning of the War of 1939.]

Resolved . . . That it is the sense of the Congress, vested as it is with the sole power to declare war, that all persons owing allegiance to the United States should, in behalf of their own safety and the vital interest of the United States, forbear to exercise the right to travel as passengers on any armed vessel of any belligerent Power, whether such vessel be armed for offensive or defensive purposes, and it is the further sense of Congress that no passport should be issued or renewed by the Secretary of State, or anyone acting under him, to be used by any person owing allegiance to the United States for the purpose of travel upon any such armed vessel of a belligerent Power.

6. WILSON'S ADDRESS TO THE SENATE

22 JANUARY 1917

[Wilson was re-elected at the presidential election of November 1916, though by a very narrow majority. In December he appealed to both parties in the war to state their peace terms, but it was soon clear that the divergence between the two sides was far too great for any mediation to be possible. On 22 January 1917 Wilson addressed the Senate and explained the attitude of the American Government. The speech anticipated his declaration of the Fourteen Points in many particulars, and was specially notable for its insistence that the only true peace would be a "peace without victory".]

Gentlemen of the Senate:

On the eighteenth of December last I addressed an identic note to the governments of the nations now at war requesting them to state, more definitely than they had yet been stated by either group of belligerents, the terms upon which they would deem it possible to make peace. I spoke on behalf of humanity and of the rights of all neutral nations like our own, many of whose most vital interests the war puts in constant jeopardy. The Central Powers united in a reply which stated merely that they were ready to meet their antagonists in conference to discuss terms of peace. The Entente Powers have replied much more definitely and have stated, in general terms, indeed, but with sufficient definiteness to imply details, the arrangements, guarantees, and acts of reparation which they deem to be the indispensable conditions of a satisfactory settlement. We are that much nearer the discussion of the international concert which must thereafter hold the world at peace. In every discussion of the peace that must end this war it is taken for granted that that peace must be followed by some definite concert of power which will make it virtually impossible that any such catastrophe should ever overwhelm us again. Every lover of mankind, every sane and thoughtful man, must take that for granted.

I have sought this opportunity to address you because I thought that I owed it to you, as the counsel associated with me in the final determination of our international obligations, to disclose to you without reserve the thought and purpose that have been taking form in my mind in regard to the duty of our Government in the days to come when it will be necessary to lay afresh and upon a new plan the foundations of peace among the nations.

It is inconceivable that the people of the United States should play no part in that great enterprise. To take part in such a service will be the opportunity for which they have sought to prepare themselves by the very principles and purposes of their polity and the approved practices of their Government ever since the days when they set up a new nation in the high and honorable hope that it might in all that it was and did show mankind the way to liberty. They cannot in honor withhold the service to which they are now about to be challenged. They do not wish to withhold it. But they owe it to themselves and to the other nations of the world to state the conditions under which they will feel free to render it.

That service is nothing less than this, to add their authority and their power to the authority and force of other nations to guarantee peace and justice throughout the world. Such a settlement cannot now be long postponed. It is right that before it comes this Government should frankly formulate the conditions upon which it would feel justified in asking our people to approve its formal and solemn adherence to a League for Peace. I am here to attempt to state those conditions.

The present war must first be ended; but we owe it to candor and to a just regard for the opinion of mankind to say that, so far as our participation in guarantees of future peace is concerned, it makes a great deal of difference in what way and upon what terms it is ended. The treaties and agreements which bring it to an end must embody terms which will create a peace that is worth guaranteeing and preserving, a peace that will

win the approval of mankind, not merely a peace that will serve the several interests and immediate aims of the nations engaged.

We shall have no voice in determining what those terms shall be, but we shall, I feel sure, have a voice in determining whether they shall be made lasting or not by the guarantees of a universal covenant, and our judgment upon what is fundamental and essential as a condition precedent to permanency should be spoken now, not afterwards when it may be too late.

No covenant of co-operative peace that does not include the peoples of the New World can suffice to keep the future safe against war; and yet there is only one sort of peace that the peoples of America could join in guaranteeing. The elements of that peace must be elements that engage the confidence and satisfy the principles of the American governments, elements consistent with their political faith and with the practical convictions which the peoples of America have once for all embraced and undertaken to defend.

I do not mean to say that any American government would throw any obstacle in the way of any terms of peace the governments now at war might agree upon, or seek to upset them when made, whatever they might be. I only take it for granted that mere terms of peace between the belligerents will not satisfy even the belligerents themselves. Mere agreements may not make peace secure.

It will be absolutely necessary that a force be created as a guarantor of the permanency of the settlement so much greater than the force of any nation now engaged or any alliance hitherto formed or projected that no nation, no probable combination of nations could face or withstand it. If the peace presently to be made is to endure, it must be a peace made secure by the organized major force of mankind.

The terms of the immediate peace agreed upon will determine whether it is a peace for which such a guarantee can be secured. The question upon which the whole future peace and policy of the world depends

is this: Is the present war a struggle for a just and secure peace, or only for a new balance of power? If it be only a struggle for a new balance of power, who will guarantee, who can guarantee, the stable equilibrium of the new arrangement? Only a tranquil Europe can be a stable Europe. There must be, not a balance of power, but a community of power; not organized rivalries, but an organized common peace.

Fortunately we have received very explicit assurances on this point. The statesmen of both of the groups of nations now arrayed against one another have said, in terms that could not be misinterpreted, that it was no part of the purpose they had in mind to crush their antagonists. But the implications of these assurances may not be equally clear to all—may not be the same on both sides of the water. I think it will be serviceable if I attempt to set forth what we understand them to be.

They imply, first of all, that it must be a peace without victory. It is not pleasant to say this. I beg that I may be permitted to put my own interpretation upon it and that it may be understood that no other interpretation was in my thought. I am seeking only to face realities and to face them without any soft concealments. Victory would mean peace forced upon the loser, a victor's terms imposed upon the vanquished. It would be accepted in humiliation, under duress, at an intolerable sacrifice, and would leave a sting, a resentment, a bitter memory upon which terms of peace would rest, not permanently, but only as upon quicksand. Only a peace between equals can last. Only a peace the very principle of which is equality and a common participation in a common benefit. The right state of mind, the right feeling between nations, is as necessary for a lasting peace as is the just settlement of vexed questions of territory or of racial and national allegiance.

The equality of nations upon which peace must be founded if it is to last must be an equality of rights; the guarantees exchanged must neither recognize nor imply a difference between big nations and small, between those that are powerful and those that are weak. Right must be

based upon the common strength, not upon the individual strength, of the nations upon whose concert peace will depend. Equality of territory or of resources there of course cannot be; nor any sort of equality not gained in the ordinary peaceful and legitimate development of the peoples themselves. But no one asks or expects anything more than an equality of rights. Mankind is looking now for freedom of life, not for equipoises of power.

And there is a deeper thing involved than even equality of right among organized nations. No peace can last, or ought to last, which does not recognize and accept the principle that governments derive all their just powers from the consent of the governed, and that no right anywhere exists to hand peoples about from sovereignty to sovereignty as if they were property. I take it for granted, for instance, if I may venture upon a single example, that statesmen everywhere are agreed that there should be a united, independent, and autonomous Poland, and that henceforth inviolable security of life, of worship, and of industrial and social development should be guaranteed to all peoples who have lived hitherto under the power of governments devoted to a faith and purpose hostile to their own.

I speak of this, not because of any desire to exalt an abstract political principle which has always been held very dear by those who have sought to build up liberty in America, but for the same reason that I have spoken of the other conditions of peace which seem to me clearly indispensable—because I wish frankly to uncover realities. Any peace which does not recognize and accept this principle will inevitably be upset. It will not rest upon the affections or the convictions of mankind. The ferment of spirit of whole populations will fight subtly and constantly against it, and all the world will sympathize. The world can be at peace only if its life is stable, and there can be no stability where the will is in rebellion, where there is not tranquillity of spirit and a sense of justice, of freedom, and of right.

So far as practicable, moreover, every great people

now struggling towards a full development of its resources and of its powers should be assured a direct outlet to the great highways of the sea. Where this cannot be done by the cession of territory, it can no doubt be done by the neutralization of direct rights of way under the general guarantee which will assure the peace itself. With a right comity of arrangement no nation need be shut away from free access to the open paths of the world's commerce.

And the paths of the sea must alike in law and in fact be free. The freedom of the seas is the *sine qua non* of peace, equality, and co-operation. No doubt a somewhat radical reconsideration of many of the rules of international practice hitherto thought to be established may be necessary in order to make the seas indeed free and common in practically all circumstances for the use of mankind, but the motive for such changes is convincing and compelling. There can be no trust or intimacy between the peoples of the world without them. The free, constant, unthreatened intercourse of nations is an essential part of the process of peace and of development. It need not be difficult either to define or to secure the freedom of the seas if the governments of the world sincerely desire to come to an agreement concerning it.

It is a problem closely connected with the limitation of naval armaments and the co-operation of the navies of the world in keeping the seas at once free and safe. And the question of limiting naval armaments opens the wider and perhaps more difficult question of the limitation of armies and of all programs of military preparation. Difficult and delicate as these questions are, they must be faced with the utmost candor and decided in a spirit of real accommodation if peace is to come with healing in its wings, and come to stay. Peace cannot be had without concession and sacrifice. There can be no sense of safety and equality among the nations if great preponderating armaments are henceforth to continue here and there to be built up and maintained. The statesmen of the world must plan for peace and nations

must adjust and accommodate their policy to it as they have planned for war and made ready for pitiless contest and rivalry. The question of armaments, whether on land or sea, is the most immediately and intensely practical question connected with the future fortunes of nations and of mankind.

I have spoken upon these great matters without reserve and with the utmost explicitness because it has seemed to me to be necessary if the world's yearning desire for peace was anywhere to find free voice and utterance. Perhaps I am the only person in high authority amongst all the peoples of the world who is at liberty to speak and hold nothing back. I am speaking as an individual, and yet I am speaking also, of course, as the responsible head of a great government, and I feel confident that I have said what the people of the United States would wish me to say.

May I not add that I hope and believe that I am in effect speaking for liberals and friends of humanity in every nation and of every program of liberty? I would fain believe that I am speaking for the silent mass of mankind everywhere who have as yet had no place or opportunity to speak their real hearts out concerning the death and ruin they see to have come already upon the persons and the homes they hold most dear.

And in holding out the expectation that the people and Government of the United States will join the other civilized nations of the world in guaranteeing the permanence of peace upon such terms as I have named, I speak with the greater boldness and confidence because it is clear to every man who can think that there is in this promise no breach in either our traditions or our policy as a nation, but a fulfilment, rather, of all that we have professed or striven for.

I am proposing, as it were, that the nations should with one accord adopt the doctrine of President Monroe as the doctrine of the world: that no nation should seek to extend its polity over any other nation or people, but that every people should be left free to determine its own polity, its own way of development, unhindered,

unthreatened, unafraid, the little along with the great and powerful.

I am proposing that all nations henceforth avoid entangling alliances which would draw them into competitions of power; catch them in a net of intrigue and selfish rivalry, and disturb their own affairs with influences intruded from without. There is no entangling alliance in a concert of power. When all unite to act in the same sense and with the same purpose all act in the common interest and are free to live their own lives under a common protection.

I am proposing government by the consent of the governed; that freedom of the seas which in international conference after conference representatives of the United States have urged with the eloquence of those who are the convinced disciples of liberty; and that moderation of armaments which makes of armies and navies a power for order merely, not an instrument of aggression or of selfish violence.

These are American principles, American policies. We could stand for no others. And they are also the principles and policies of forward looking men and women everywhere, of every modern nation, of every enlightened community. They are the principles of mankind and must prevail.

7. WILSON'S WAR ADDRESS TO CONGRESS

2 APRIL 1917

[On 1 February 1917, Germany resumed unrestricted submarine warfare, sinking at sight all merchant ships in a zone of warfare round the British Isles, in the Eastern Atlantic, and in the Mediterranean. On 3 February diplomatic relations with Germany were broken off. On 26 February the British Naval Intelligence Department handed over to the American Government the "Zimmerman

note," which they had discovered, a note from the German Foreign Minister to the Minister in Mexico, ordering him to offer that country a military alliance against the United States with the territory lost by Mexico in 1848 as a bait, if war should break out between the United States and Germany. This note was released to the Press on 1 March and greatly excited public feeling. During March three American ships were torpedoed. Wilson called an extraordinary session of Congress on 2 April 1917, and delivered an address to the two houses. Congress on 6 April passed a joint resolution declaring war on Germany.]

On the Entry of the United States of America into the War.

I called Congress in Extraordinary Session because there are serious, very serious, choices of policy to be made, and made immediately, which it was neither right constitutionally nor permissible I should assume the responsibility of making. On 3 February last I officially laid before you the extraordinary announcement of the Imperial German Government that on and after 1 February it was its purpose to put aside all restraints of law or humanity, and use its submarines to sink every vessel that sought to approach either the ports of Great Britain and Ireland, or the western coasts of Europe, or any of the ports controlled by the enemies of Germany within the Mediterranean. That had seemed to be the object of the German submarine warfare earlier in the War, but since April of last year the Imperial Government had somewhat restrained the commanders of its undersea craft in conformity with its promise then given us that passenger boats should not be sunk, and due warning would be given to all other vessels which its submarines might seek to destroy when no resistance was offered or escape attempted, and care would be taken that their crews were given at least a fair chance to save their lives in their open boats. The precautions then were mcagre and haphazard enough, as was proved in distressing instance after instance in the progress of the cruel and unmanly business, but a certain degree of restraint was observed.

The new policy swept every restriction aside. Vessels

of every kind, whatever their flag, character, cargo, cargo destination, or errand, have been ruthlessly sent to the bottom without warning, without thought of help or mercy for those on board vessels of friendly neutrals along with those of belligerents. Even hospital ships, ships carrying relief to the sorely bereaved and stricken people of Belgium, though the latter were provided with a safe-conduct through the prescribed areas by the German Government itself, and were distinguished by unmistakable marks of identity, were sunk with the same reckless lack of compassion. The principle of international law had its origin in an attempt to set up some law which would be respected and observed upon the seas, where no nation had the right of dominion, where lay the free highways of the world. By painful stage after stage has that law been built up, with meagre enough results indeed, after all has been accomplished, always with a clear view at least of what the heart and conscience of mankind desired. This minimum the German Government swept aside under the plea of retaliation and necessity, and because it had no weapons which it could use at sea, except those which it is impossible to employ, as it is employing them, without throwing to the winds all scruples of humanity or respect for the understandings supposed to underlie the intercourse of the world.

I am not now thinking of the loss of property involved, immense and serious as it is, but only of the wanton and wholesale destruction of the lives of non-combatant men, women, and children, engaged in pursuits which have always, even in the darkest periods of modern history, been deemed innocent and legitimate. Property can be paid for; the lives of peaceful and innocent people cannot be. The present German warfare against commerce is warfare against mankind. It is a war against all nations. American ships have been sunk, and American lives taken in ways which it has stirred us very deeply to learn of, but the ships and people of other neutral and friendly nations have been sunk and overwhelmed in the waters in the same way. There has been

no discrimination. The challenge is to all mankind. Each nation must decide for itself how it will meet it. The choice we make for ourselves must be made with the moderation of counsel and temperateness of judgment befitting our character and motives as a nation. We must put excited feeling away. Our motive will not be revenge or the victorious assertion of the physical might of the nation, but only a vindication of right, of human right, of which we are only a single champion. When I addressed Congress on 26 February last I thought it would suffice to assert our neutral rights with arms, our right to use the seas against unlawful interference, our right to keep our people safe against unlawful violence, but armed neutrality now appears impracticable. Because submarines are in effect outlaws when used as the German submarines have been used against merchant shipping it is impossible to defend ships against their attacks, as the law of nations has assumed that merchantmen would defend themselves against privateers or cruisers, which are visible craft, when given chase upon the open sea. It is common prudence in such circumstances, of grim necessity indeed, to endeavor to destroy them before they have shown their own intention. They must be dealt with upon sight if dealt with at all.

The German Government denies the right of neutrals to use arms at all within the areas of the sea which it has prescribed, even in defence of rights which no modern publicist ever before questioned. An intimation has been conveyed that the armed guards which we have placed on our merchant ships will be treated as beyond the pale of the law and subject to be dealt with as pirates.

Armed neutrality is ineffectual enough at the best in such circumstances. In the face of such pretensions it is worse than ineffectual. It is likely to produce what it was meant to prevent. It is practically certain to draw us into war without either the rights or effectiveness of belligerents. There is one choice we cannot make and are incapable of making. We will not choose the path of

submission, and suffer the most sacred rights of our nation and our people to be ignored and violated. The wrongs against which we now array ourselves are not common wrongs; they cut to the very root of human life.

With a profound sense of the solemn event and the tragical character of the step I am taking, and of the grave responsibilities which it involves, but in unhesitating obedience to what I deem my constitutional duty, I advise that Congress declare:

That the recent course of the Imperial German Government is in fact nothing less than war against the Government and people of the United States;

That it formally accept the status of a belligerent which is thus thrust upon it; and

That it take immediate steps not only to put the country in a more thorough state of defence, but also to exert all its power and to employ its resources to bring the Government of the German Empire to terms and end the War.

What this involves is clear. It will involve the utmost practicable co-operation in council with the Governments now at war with Germany, and as incident thereto an extension to those Governments of the most liberal financial credits in order that our resources may as far as possible be added to theirs. It will involve the organization and mobilization of all the material resources of the country to supply materials of war to serve the incidental needs of the nation in the most abundant, yet most economical and most effective way possible. It will involve the immediate full equipment of the navy in all respects, but particularly in supplying it with the best means of dealing with the enemy's submarines. It will involve the immediate addition to the armed forces of the United States already provided for by law in case of war of at least five hundred thousand men, who should, in my opinion, be chosen upon the principle of universal liability to service, and also the authorization of subsequent additional increments of equal force so soon as they may be needed and as they can be handled in training.

It will involve also, of course, the granting of adequate credits to the Government, sustained, I hope, so far as can equitably be sustained by the present generation, by well-conceived taxation. I say sustained as far as may be equitable by taxation, because it seems to me it would be unwise to base the credits which will now be necessary entirely upon money borrowed. It is our duty, I most respectfully urge, to protect our people as far as we may against the very serious hardships and evils which are likely to arise out of the inflation which would be produced by vast loans. In carrying out the measures whereby these things will be accomplished we should keep constantly in mind the wisdom of interfering as little as possible, in our own preparation and in the equipment of our own military forces, with the duty, for it will be a very practical duty, of supplying nations already at war with Germany with materials which they can obtain only from us or by our assistance. They are in the field. We should help them in every way to be effective there. I take the liberty of suggesting through several executive departments of the Government for the consideration of your committees measures for the accomplishment of the several objects I have mentioned. I hope it will be your pleasure to deal with them as having been framed after very careful thought by the branch of the Government upon which the responsibility of conducting war and safeguarding the nation will most directly fall.

While we do these things—these deeply momentous things—let us make it very clear to the world what our motives and our objects are. My own thought has not been driven from the habitual normal course by the unhappy events of the last two months. I do not believe the thought of the nation has been altered or clouded by them. I have actually the same things in mind now as I had when I addressed the Senate on 22 January, the same that I had in mind when I addressed Congress on 3 February and 26 February. Our object now, as then, is to vindicate the principles of peace and justice in the life of the world as against selfish autocratic

power, and to set up amongst really free and self-governed peoples of the world such a concert of purpose and action as will henceforth ensure the observance of these principles. Neutrality is no longer feasible or desirable where the peace of the world is involved and the freedom of its peoples, and the menace to that peace and freedom lies in the existence of autocratic Governments backed by organized force, which is controlled wholly by their will, and not by the will of their people. We have seen the last of neutrality in such circumstances. We are at the beginning of an age in which it will be insisted that the same standards of conduct and responsibility for wrong done shall be observed among nations and their Governments that are observed among individual citizens of civilized States. We have not quarrelled with the German people. We have no feeling towards them but one of sympathy and friendship. It was not upon their impulse that their Government acted in entering this War. It was not with their previous knowledge or approval.

It was a war determined upon as wars used to be determined upon in the old unhappy days, when peoples were nowhere consulted by their rulers, and wars were provoked and waged in the interest of dynasties, or little groups of ambitious men, who were accustomed to use their fellow-men as pawns and tools. Self-governed nations do not fill their neighbor States with spies or set in course an intrigue to bring about some critical posture of affairs which would give them an opportunity to strike and make a conquest. Such designs can be successfully worked only under cover where no one has a right to ask questions. Cunningly contrived plans of deception or impression, carried, it may be, from generation to generation, can be worked out and kept from light only within the privacy of courts, or behind the carefully guarded confidences of a narrow privileged class. They are happily impossible where public opinion commands and insists upon full information concerning all the nation's affairs. A

steadfast concert for peace can never be maintained except by the partnership of democratic nations. No autocratic government could be trusted to keep faith within it or observe its covenants. There must be a league of honor and partnership of opinion. Intrigue would eat its vitals away. Plottings by inner circles, who would plan what they would and render an account to no one, would be corruption seated at its very heart. Only free peoples can hold their purpose and their honor steady to the common end, and prefer the interests of mankind to any narrow interest of their own.

Does not every American feel that assurance has been added to our hope for the future peace of the world by the wonderful heartening things that have been happening within the last few weeks in Russia? Russia was known by those who knew her best to have been always, in fact, democratic at heart in all vital habits, in her thought, and in all intimate relations of her people that spoke of their natural instinct and their habitual attitude towards life. The autocracy that crowned the summit of her political structure, long as it had stood and terrible as it was in the reality of its power, was not, in fact, Russian in origin, character, or purpose, and now it has been shaken and the great generous Russian people have been added in all their native majesty and might to the forces that are fighting for freedom in the world, for justice and for peace. Here is a fit partner for a league of honor.

One of the things that has served to convince us that Prussian autocracy was not, and could never be, our friend is that, from the very outset of the present war, it filled our unsuspecting communities, and even our offices of government, with spies, and set criminal intrigues everywhere afoot against our national unity of council and our peace within and without our industries and our commerce. Indeed, it is now evident that spies were here even before the War began.

It is, unhappily, not a matter of conjecture, but of fact, proved in our courts of justice, that intrigues which more than once came perilously near disturbing the

peace and dislocating the industries of the country have been carried on at the instigation, with the support, and even under the personal direction, of official agents of the Imperial Government accredited to the Government of the United States. Even in checking these things and trying to extirpate them we have sought to put the most generous interpretation possible upon them, because we knew that their source lay not in any hostile feeling or purpose of the German people towards us (who were, no doubt, as ignorant of them as ourselves), but only in selfish designs of a Government that did what it pleased, and told its people nothing. But they played their part in serving to convince us at last that that Government entertains no real friendship for us, and means to act against our peace and security at its convenience. That it means to stir up enemies against us at our very doors the intercepted Note to the German Minister at Mexico City is eloquent evidence.

We are accepting this challenge of hostile purpose because we know that in such a Government, following such methods, we can never have a friend, and that in the presence of its organized power, always lying in wait to accomplish we know not what purpose, there can be no assured security for the democratic Governments of the world. We are now about to accept the gage of battle with this natural foe to liberty, and we shall, if necessary, spend the whole force of the nation to check and nullify its pretensions and its power. We are glad now that we see the facts with no veil of false pretense about them, to fight thus for the ultimate peace of the world, for the liberation of its peoples—the German peoples included—the rights of nations, great and small, and the privilege of men everywhere to choose their way of life and obedience. The world must be safe for democracy. Its peace must be planted upon trusted foundations of political liberty.

We have no selfish ends to serve. We desire no conquests and no dominion. We seek no indemnities for ourselves, and no material compensation for sacrifices we shall freely make. We are but one of the champions

of the rights of mankind, and shall be satisfied when those rights are as secure as fact and the freedom of nations can make them. Just because we fight without rancor and without selfish objects, seeking nothing for ourselves but what we shall wish to share with all free peoples, we shall, I feel confident, conduct our operations as belligerents without passion, and ourselves observe with proud punctilio the principles of right and fair play we profess to be fighting for.

I have said nothing of Governments allied with the Imperial Government of Germany, because they have not made war upon us or challenged us to defend our rights and our honour. The Austro-Hungarian Government has, indeed, avowed its unqualified endorsement and acceptance of reckless and lawless submarine warfare, adopted now without disguise by the Imperial German Government, and it has, therefore, not been possible for this Government to receive Count Tarnowski, the Ambassador recently accredited to this Government by Austria-Hungary; but that Government has not actually engaged in warfare against the citizens of the United States on the seas, and I take the liberty, for the present at least, of postponing the discussion of our relations with the authorities in Vienna. We enter this war only where clearly forced into it, because there are no other means of defending our rights. It will be easier for us to conduct ourselves as belligerents in a high spirit of right and fairness because we act without animus, not in enmity towards a people, or with a desire to bring any injury or disadvantage upon them, but only in armed opposition to an irresponsible Government, which has thrown aside all considerations of humanity and right, and is running amok. We are, let me say again, sincere friends of the German people, and shall desire nothing so much as an early re-establishment of intimate relations to our mutual advantage. However hard it may be for them for the time being to believe this, it is spoken from our hearts. We have borne with their present Government through all these bitter months because of that friendship,

exercising patience and forbearance which otherwise would have been impossible. We shall, happily, still have an opportunity to prove that friendship in our daily attitude and actions towards millions of men and women of German birth and native sympathy who live amongst us and share our life, and we shall be proud to prove it towards all who in fact are loyal to their neighbors and to the Government in the hour of test. They are, most of them, as true and loyal Americans as if they had never known any other fealty or allegiance. They will be prompt to stand with us in rebuking and restraining the few who may be of different mind and purpose. If there should be disloyalty, it will be dealt with with the firm hand of stern repression, but, if it lifts its head at all, it will lift it only here and there, and without countenance, except from the lawless and malignant few.

It is a distressing and oppressive duty, gentlemen of Congress, which I have performed in thus addressing you. There are, it may be, many months of fiery trial and sacrifice ahead of us. It is a fearful thing to lead this great and peaceful people into war, into the most terrible and disastrous of all wars. Civilization itself seems to be in the balance, but right is more precious than peace, and we shall fight for the things which we have always carried nearest our hearts, for democracy, for the right of those who submit to authority to have a voice in their own government, for the rights and liberties of small nations, for the universal dominion of right by such a concert of free peoples as will bring peace and safety to all nations, and make the world itself at last free. To such a task we can dedicate our lives, our fortunes, everything we are, everything we have, with the pride of those who know the day has come when America is privileged to spend her blood and might for the principles that gave her birth, and the happiness and peace which she has treasured. God helping her, she can do no other.

8. PRESIDENT WILSON'S ADDRESS TO CONGRESS ON THE FOURTEEN POINTS

8 JANUARY 1918

[On 26 November 1917, Russia had applied to the German High Command for an armistice preparatory to a peace without indemnities or annexations. On 30 November an Interallied Conference on Peace Terms met at Paris, but reached no conclusions. Negotiations for a peace between Russia and Germany began at Brest-Litovsk on 20 December. On 8 January 1918, President Wilson in an Address to Congress laid down the famous "Fourteen Points", the United States' "programme of the world's peace". In October 1918, the German Government opened negotiations for a settlement on the basis of these terms, which were accepted by the Allied powers, with full reservations on the second point, the Freedom of the Seas.]

It will be our wish and purpose that the processes of peace, when they are begun, shall be absolutely open and that they shall involve and permit henceforth no secret understandings of any kind. The day of conquest and aggrandizement is gone by; so is also the day of secret covenants entered into in the interest of particular governments and likely at some unlooked-for moment to upset the peace of the world. It is this happy fact, now clear to the view of every public man whose thoughts do not still linger in an age that is dead and gone, which makes it possible for every nation whose purposes are consistent with justice and the peace of the world to avow now or at any other time the objects it has in view.

We entered this war because violations of right had occurred which touched us to the quick and made the life of our own people impossible unless they were corrected and the world secured once for all against their recurrence. What we demand in this war, there-

fore, is nothing peculiar to ourselves. It is that the world be made fit and safe to live in; and particularly that it be made safe for every peace-loving nation which, like our own, wishes to live its own life, determine its own institutions, be assured of justice and fair dealing by the other peoples of the world as against force and selfish aggression. All the peoples of the world are in effect partners in this interest, and for our own part we see very clearly that unless justice be done to others it will not be done to us. The program of the world's peace, therefore, is our program; and that program, the only possible program, as we see it, is this:

I. Open covenants of peace, openly arrived at, after which there shall be no private international understandings of any kind but diplomacy shall proceed always frankly and in the public view.

II. Absolute freedom of navigation upon the seas, outside territorial waters, alike in peace and in war, except as the seas may be closed in whole or in part by international action for the enforcement of international covenants.

III. The removal, so far as possible, of all economic barriers and the establishment of an equality of trade conditions among all the nations consenting to the peace and associating themselves for its maintenance.

IV. Adequate guarantees given and taken that national armaments will be reduced to the lowest point consistent with domestic safety.

V. A free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined.

VI. The evacuation of all Russian territory and such a settlement of all questions affecting Russia as will secure the best and freest co-operation of the other nations of the world in obtaining for her an unhampered

and unembarrassed opportunity for the independent determination of her own political development and national policy and assure her of a sincere welcome into the society of free nations under institutions of her own choosing; and, more than a welcome, assistance also of every kind that she may need and may herself desire. The treatment accorded Russia by her sister nations in the months to come will be the acid test of their goodwill, of their comprehension of her needs as distinguished from their own interests, and of their intelligent and unselfish sympathy.

VII. Belgium, the whole world will agree, must be evacuated and restored, without any attempt to limit the sovereignty which she enjoys in common with all other free nations. No other single act will serve as this will serve to restore confidence among the nations in the laws which they have themselves set and determined for the government of their relations with one another. Without this healing act the whole structure and validity of international law is forever impaired.

VIII. All French territory should be freed and the invaded portions restored, and the wrong done to France by Prussia in 1871 in the matter of Alsace-Lorraine, which has unsettled the peace of the world for nearly fifty years, should be righted, in order that peace may once more be made secure in the interest of all.

IX. A readjustment of the frontiers of Italy should be effected along clearly recognizable lines of nationality.

X. The peoples of Austria-Hungary, whose place among the nations we wish to see safeguarded and assured, should be accorded the freest opportunity of autonomous development.

XI. Rumania, Serbia, and Montenegro should be evacuated; occupied territories restored; Serbia accorded free and secure access to the sea; and the relations of the several Balkan states to one another determined by friendly counsel along historically established lines of allegiance and nationality; and international guarantees of the political and economic

independence and territorial integrity of the several Balkan states should be entered into.

XII. The Turkish portions of the present Ottoman Empire should be assured a secure sovereignty, but the other nationalities which are now under Turkish rule should be assured an undoubted security of life and an absolutely unmolested opportunity of autonomous development, and the Dardanelles should be permanently opened as a free passage to the ships and commerce of all nations under international guarantees.

XIII. An independent Polish state should be erected which should include the territories inhabited by indisputably Polish populations, which should be assured a free and secure access to the sea, and whose political and economic independence and territorial integrity should be guaranteed by international covenant.

XIV. A general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike.

In regard to these essential rectifications of wrong and assertions of right we feel ourselves to be intimate partners of all the governments and peoples associated together against the Imperialists. We cannot be separated in interest or divided in purpose. We stand together until the end.

For such arrangements and covenants we are willing to fight and to continue to fight until they are achieved; but only because we wish the right to prevail and desire a just and stable peace such as can be secured only by removing the chief provocations to war, which this program does not remove. We have no jealousy of German greatness, and there is nothing in this program that impairs it. We grudge her no achievement or distinction of learning or of pacific enterprise such as have made her record very bright and very enviable. We do not wish to injure her or to block in any way her legitimate influence or power. We do not wish to fight her either with arms or with hostile arrangements of trade if she is willing to associate herself with us and the

other peace-loving nations of the world in covenants of justice and law and fair dealing. We wish her only to accept a place of equality among the peoples of the world—the new world in which we now live—instead of a place of mastery.

Neither do we presume to suggest to her any alteration or modification of her institutions. But it is necessary, we must frankly say, and necessary as a preliminary to any intelligent dealings with her on our part, that we should know whom her spokesmen speak for when they speak to us, whether for the Reichstag majority or for the military party and the men whose creed is imperial domination.

We have spoken now, surely, in terms too concrete to admit of any further doubt or question. An evident principle runs through the whole program I have outlined. It is the principle of justice to all peoples and nationalities, and their right to live on equal terms of liberty and safety with one another, whether they be strong or weak. Unless this principle be made its foundation no part of the structure of international justice can stand. The people of the United States could act upon no other principle; and to the vindication of this principle they are ready to devote their lives, their honor, and everything that they possess. The moral climax of this the culminating and final war for human liberty has come, and they are ready to put their own strength, their own highest purpose, their own integrity and devotion to the test.

9. THE SEDITION ACT

16 MAY 1918

[The Sedition Act of 16 May 1918 amended and strengthened the Espionage Act of 15 June 1917. The Act, which went a great deal further than the Sedition Act of 1798 or the measures passed by either side in the Civil War,

was vigorously applied by the Attorney General, Palmer. The Supreme Court, in the case of *Schenck v. United States* (1919) upheld the constitutionality of the Acts, which, it had been claimed, were a violation of the First Amendment. During and after the war the Act was used particularly against Labour leaders.]

Be it enacted, That section three of the Act . . . approved 15 June 1917, be . . . amended so as to read as follows: "Sec. 3. Whoever, when the United States is at war, shall wilfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States, or to promote the success of its enemies, or shall wilfully make or convey false reports, or false statements, or say or do anything except by way of *bona fide* and not disloyal advice to an investor . . . with intent to obstruct the sale by the United States of bonds . . . or the making of loans by or to the United States, or whoever, when the United States is at war, shall wilfully cause . . . or incite . . . insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or shall wilfully obstruct . . . the recruiting or enlistment service of the United States, and whoever, when the United States is at war, shall wilfully utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language about the form of government of the United States, or the Constitution of the United States, or the military or naval forces of the United States, or the flag . . . or the uniform of the Army or Navy of the United States, or any language intended to bring the form of government . . . or the Constitution . . . or the military or naval forces . . . or the flag . . . of the United States into contempt, scorn, contumely, or disrepute . . . or shall wilfully display the flag of any foreign enemy, or shall wilfully . . . urge, incite, or advocate any curtailment of production in this country of any thing or things . . . necessary or essential to the prosecution of the war . . . and whoever shall wilfully advocate, teach, defend, or suggest the doing of any of the acts or things in this section enumerated and who-

44 *The Eighteenth Amendment, 29 January 1919*

ever shall by word or act support or favor the cause of any country with which the United States is at war or by word or act oppose the cause of the United States therein, shall be punished by a fine of not more than \$10,000 or imprisonment for not more than twenty years, or both. . . .”

10. THE EIGHTEENTH AMENDMENT

29 JANUARY 1919

[The first State to establish the prohibition of alcoholic liquor was Maine in 1851. After the Civil War the enormous increase in the traffic in liquor and the increase in the number of “saloons” in the large cities led to a strong movement throughout the United States in favour of Prohibition. This was supported by powerful organisations, of which the most important were the Anti-Saloon League and the Women’s Christian Temperance Union. In 1900 five States were “dry,” in 1917 over thirty. State legislation prohibiting the importation of liquor had been declared unconstitutional by the Supreme Court in 1888 and 1889 under the Commerce Clause of the Constitution, and this led to a demand for a national measure. The Webb-Kenyon Act of 1913 prohibited the transport of liquor to any State where its sale was illegal, and during the war Congress as a war measure forbade its manufacture and sale. An Amendment to the Constitution prohibiting the manufacture, sale, or transportation of intoxicating liquors was passed by Congress on 18 December 1917, was promptly ratified by forty-six States, and was declared ratified on 29 January 1919. The Amendment was enforced by means of the Volstead Act (No. 11).]

After one year from the ratification of this article, the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

The Congress and the several States shall have con-

current power to enforce this article by appropriate legislation.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

II. THE VOLSTEAD ACT

28 OCTOBER 1919

[The Eighteenth Amendment was ratified in January 1919, and was to come into effect a year later. Under the War Prohibition Act of 1917 the manufacture and sale of intoxicating liquors had been prohibited during the war. The National Prohibition Act, known as the Volstead Act, was passed over Wilson's veto on 28 October 1919, to enforce the Amendment when it came into effect. It defined intoxicating liquor as any beverages which contain one-half of 1 per centum or more of alcohol by volume.]

Be it enacted. . . . That the short title of this Act shall be the "National Prohibition Act."

TITLE I.

To Provide for the Enforcement of War Prohibition.

The term "War Prohibition Act" used in this Act shall mean the provisions of any Act or Acts prohibiting the sale and manufacture of intoxicating liquors until the conclusion of the present war and thereafter until the termination of demobilization, the date of which shall be determined and proclaimed by the President of the United States. The words "beer, wine, or other intoxicating malt or vinous liquors" in the War Prohibition Act shall be hereafter construed to mean any such beverages which contain one-half of 1 per centum or more of alcohol by volume: . . .

SEC. 2. The Commissioner of Internal Revenue, his assistants, agents, and inspectors, shall investigate and report violations of the War Prohibition Act to the United States attorney for the district in which committed, who shall be charged with the duty of prosecuting, subject to the direction of the Attorney General, the offenders as in the case of other offenses against laws of the United States; and such Commissioner of Internal Revenue, his assistants, agents, and inspectors may swear out warrants before United States commissioners or other officers or courts authorized to issue the same for the apprehension of such offenders, and may, subject to the control of the said United States attorney, conduct the prosecution at the committing trial for the purpose of having the offenders held for the action of a grand jury. . . .

TITLE II.

Prohibition of Intoxicating Beverages.

SEC. 3. No person shall, on or after the date when the eighteenth amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor except as authorized in this Act, and all the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented. . . .

SEC. 6. No one shall manufacture, sell, purchase, transport, or prescribe any liquor without first obtaining a permit from the commissioner so to do, except that a person may, without a permit, purchase and use liquor for medicinal purposes when prescribed by a physician as herein provided, and except that any person who in the opinion of the commissioner is conducting a *bona fide* hospital or sanatorium engaged in the treatment of persons suffering from alcoholism, may, under such rules, regulations, and conditions as the commissioner shall prescribe, purchase and use, in accordance with the methods in use in such institution, liquor, to be administered to the patients of such institution under

the direction of a duly qualified physician employed by such institution.

All permits to manufacture, prescribe, sell, or transport liquor, may be issued for one year, and shall expire on the 31st day of December next succeeding the issuance thereof: . . .

SEC. 7. No one but a physician holding a permit to prescribe liquor shall issue any prescription for liquor. And no physician shall prescribe liquor unless after careful physical examination of the person for whose use such prescription is sought, or if such examination is found impracticable, then upon the best information obtainable, he in good faith believes that the use of such liquor as a medicine by such person is necessary and will afford relief to him from some known ailment. Not more than a pint of spiritous liquor to be taken internally shall be prescribed for use by the same person within any period of ten days and no prescription shall be filled more than once. . . .

SEC. 18. It shall be unlawful to advertise, manufacture, sell, or possess for sale any utensil, contrivance, machine, preparation, compound, tablet, substance, formula direction, recipe advertised, designed, or intended for use in the unlawful manufacture of intoxicating liquor. . . .

SEC. 21. Any room, house, building, boat, vehicle, structure, or place where intoxicating liquor is manufactured, sold, kept, or bartered in violation of this title, and all intoxicating liquor and property kept and used in maintaining the same, is hereby declared to be a common nuisance, and any person who maintains such a common nuisance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1000 or be imprisoned for not more than one year, or both. . . .

SEC. 33. After 1 February 1920, the possession of liquors by any person not legally permitted under this title to possess liquor shall be *prima facie* evidence that such liquor is kept for the purpose of being sold, bartered, exchanged, given away, furnished, or otherwise

disposed of in violation of the Provisions of this title. . . . But it shall not be unlawful to possess liquors in one's private dwelling while the same is occupied and used by him as his dwelling only and such liquor need not be reported, provided such liquors are for use only for the personal consumption of the owner thereof and his family residing in such dwelling and of his *bona fide* guests when entertained by him therein; and the burden of proof shall be upon the possessor in any action concerning the same to prove that such liquor was lawfully acquired, possessed, and used. . . .

12. THE DEFEAT OF THE PEACE TREATY WITH GERMANY IN THE SENATE

19 MARCH 1920

[When President Wilson returned from Europe in July 1919 he found that opposition to the Treaty of Versailles had already strongly developed, and that the United States was reacting violently against the possibility of future entanglements with foreign Powers. In September he set out on a speaking tour in the Middle West, in the course of which he fell seriously ill. On 19 November 1919, the Treaty, of which the Covenant of the League of Nations was an integral part, failed to secure the requisite two-thirds majority in the Senate. It was brought up for reconsideration in the next session and finally defeated on 19 March 1920, thirty-five Senators voting against it and forty-nine in its favour, seven less than the number required for its ratification.

The defeated resolution contained a number of reservations. Of these the most important reserved the right of Congress to exercise its full liberty of action in spite of the obligations undertaken under the Covenant of the League. The Monroe Doctrine was to be considered as being wholly outside the jurisdiction of the League; the demand was made that the Covenant should be amended so that the voting power of the United States should be equal to that of any other member of the League and its self-governing dominions and colonies taken together; and finally the United States

was to declare its adherence to the resolution of sympathy with the aspirations of the Irish people for a government of their own choice adopted by the Senate on 6 June 1919. But these reservations, made with the hope of placating the opponents of the Treaty, were unavailing.]

THE PRESIDENT *pro tempore*. Upon agreeing to the resolution of ratification the yeas are 49 and the nays are 35. Not having received the affirmative votes of two-thirds of the Senators present and voting, the resolution is not agreed to, and the Senate does not advise and consent to the ratification of the treaty of peace with Germany.

The resolution of ratification voted upon and rejected is as follows:

Resolution of Ratification.

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Treaty of Peace with Germany concluded at Versailles on the 28th day of June 1919, subject to the following reservations and understandings, which are hereby made a part and condition of this resolution of ratification, which ratification is not to take effect or bind the United States until the said reservations and understandings adopted by the Senate have been accepted as a part and a condition of this resolution of ratification by the allied and associated powers and a failure on the part of the allied and associated powers to make objection to said reservations and understandings prior to the deposit of ratification by the United States shall be taken as a full and final acceptance of such reservations and understandings by said powers:

1. The United States so understands and construes Article 1 that in case of notice of withdrawal from the League of Nations, as provided in said Article, the United States shall be the sole judge as to whether all its international obligations and all its obligations under the said Covenant have been fulfilled, and notice of withdrawal by the United States may be given by a

concurrent resolution of the Congress of the United States.

2. The United States assumes no obligation to preserve the territorial integrity or political independence of any other country by the employment of its military or naval forces, its resources, or any form of economic discrimination, or to interfere in any way in controversies between nations, including all controversies relating to territorial integrity or political independence, whether members of the League or not, under the provisions of Article 10, or to employ the military or naval forces of the United States, under any Article of the Treaty for any purpose, unless in any particular case the Congress, which, under the Constitution, has the sole power to declare war or authorize the employment of the military or naval forces of the United States, shall, in the exercise of full liberty of action, by act or joint resolution so provide.

3. No mandate shall be accepted by the United States under Article 22, part 1, or any other provision of the Treaty of Peace with Germany, except by action of the Congress of the United States.

4. The United States reserves to itself exclusively the right to decide what questions are within its domestic jurisdiction and declares that all domestic and political questions relating wholly or in part to its internal affairs, including immigration, labor, coastwise traffic, the tariff, commerce, the suppression of traffic in women and children and in opium and other dangerous drugs, and all other domestic questions, are solely within the jurisdiction of the United States and are not under this treaty to be submitted in any way either to arbitration or to the consideration of the council or of the assembly of the League of Nations, or any agency thereof, or to the decision or recommendation of any other power.

5. The United States will not submit to arbitration or to inquiry by the assembly or by the council of the League of Nations, provided for in said Treaty of Peace, any questions which in the judgment of the United States depend upon or relate to its long-established

policy, commonly known as the Monroë Doctrine; said doctrine is to be interpreted by the United States alone and is hereby declared to be wholly outside the jurisdiction of said League of Nations and entirely unaffected by any provision contained in the said Treaty of Peace with Germany.

6. The United States withholds its assent to Articles 156, 157, and 158, and reserves full liberty of action with respect to any controversy which may arise under said Articles.

7. No person is or shall be authorized to represent the United States, nor shall any citizen of the United States be eligible, as a member of any body or agency established or authorized by said Treaty of Peace with Germany, except pursuant to an act of the Congress of the United States providing for his appointment and defining his powers and duties.

8. The United States understands that the reparation commission will regulate or interfere with exports from the United States to Germany, or from Germany to the United States, only when the United States by act or joint resolution of Congress approves such regulation or interference.

9. The United States shall not be obligated to contribute to any expenses of the League of Nations, or of the secretariat, or of any commission, or committee, or conference, or other agency, organized under the League of Nations or under the Treaty or for the purpose of carrying out the Treaty provisions, unless and until an appropriation of funds available for such expenses shall have been made by the Congress of the United States: *Provided*, That the foregoing limitation shall not apply to the United States' proportionate share of the expense of the office force and salary of the secretary general.

10. No plan for the limitation of armaments proposed by the council of the League of Nations under the provisions of Article 8 shall be held as binding the United States until the same shall have been accepted by Congress, and the United States reserves the right to increase its armament without the consent of the council when-

52 *Defeat of Peace Treaty with Germany, 19 March 1920*
over the United States is threatened with invasion or engaged in war.

11. The United States reserves the right to permit, in its discretion, the nationals of a covenant-breaking State, as defined in Article 16 of the Covenant of the League of Nations, residing within the United States or in countries other than such covenant-breaking State, to continue their commercial, financial, and personal relations with the nationals of the United States.

12. Nothing in Articles 296, 297, or in any of the annexes thereto or in any other article, section, or annex of the Treaty of Peace with Germany shall, as against citizens of the United States, be taken to mean any confirmation, ratification, or approval of any act otherwise illegal or in contravention of the rights of citizens of the United States.

13. The United States withholds its assent to Part XIII (Articles 387 to 427 inclusive) unless Congress by act or joint resolution shall hereafter make provision for representation in the organization established by said Part XIII, and in such event the participation of the United States will be governed and conditioned by the provisions of such act or joint resolution.

14. Until Part I, being the Covenant of the League of Nations, shall be so amended as to provide that the United States *shall be entitled to cast a number of votes equal to that which any member of the League and its self-governing dominions, colonies, or parts of empire, in the aggregate shall be entitled to cast*, the United States assumes no obligation to be bound, except in cases where Congress has previously given its consent, by any election, decision, report, or finding of the council or assembly in which any member of the League and its self-governing dominions, colonies, or parts of empire, in the aggregate have cast more than one vote.

The United States assumes no obligation to be bound by any decision, report, or finding of the council or assembly arising out of any dispute between the United States and any member of the League if such member,

or any self-governing dominion, colony, empire, or part of empire united with it politically has voted.

15. In consenting to the ratification of the Treaty with Germany the United States adheres to the principle of self-determination and to the resolution of sympathy with the aspirations of the Irish people for a government of their own choice adopted by the Senate 6 June 1919, and declares that when such government is attained by Ireland, a consummation it is hoped is at hand, it should promptly be admitted as a member of the League of Nations.

13. WARREN G. HARDING'S SPEECH AT BOSTON

14 MAY 1920

[At the Presidential Election of 1920 the Republican party won an overwhelming victory over the Democrats. The Republicans stood for conservatism and withdrawal from the affairs of the Old World. Their candidate, Warren G. Harding, was a little-known Ohio Senator. In a speech to the Home Market Club at Boston on 14 May 1920 he had expressed his belief in economic conservatism and he had invented the slogan of "Return to Normalcy."]

There isn't anything the matter with world civilization, except that humanity is viewing it through a vision impaired in a cataclysmal war. Poise has been disturbed and nerves have been racked, and fever has rendered men irrational; sometimes there have been draughts upon the dangerous cup of barbarity and men have wandered far from safe paths, but the human procession still marches in the right direction.

Here, in the United States, we feel the reflex, rather than the hurting wound, but we still think straight, and we mean to act straight, and mean to hold firmly to all that was ours when war involved us, and seek the higher

attainments which are the only compensations that so supreme a tragedy may give mankind.

America's present need is not heroics, but healing; not nostrums, but normalcy; not revolution, but restoration; not agitation, but adjustment; not surgery, but serenity; not the dramatic, but the dispassionate; not experiment, but equipoise; not submergence in internationality, but sustainment in triumphant nationality.

It is one thing to battle successfully against world domination by military autocracy, because the infinite God never intended such a program, but it is quite another thing to revise human nature and suspend the fundamental laws of life and all of life's acquirements. . . .

This republic has its ample tasks. If we put an end to false economics which lure humanity to utter chaos, ours will be the commanding example of world leadership to-day. If we can prove a representative popular government under which a citizenship seeks what it may do for the government rather than what the government may do for individuals, we shall do more to make democracy safe for the world than all armed conflict ever recorded. The world needs to be reminded that all human ills are not curable by legislation, and that quantity of statutory enactment and excess of government offer no substitute for quality of citizenship.

The problems of maintained civilization are not to be solved by a transfer of responsibility from citizenship to government, and no eminent page in history was ever drafted by the standards of mediocrity. More, no government is worthy of the name which is directed by influence on the one hand, or moved by intimidation on the other. . . .

My best judgment of America's needs is to steady down, to get squarely on our feet, to make sure of the right path. Let's get out of the fevered delirium of war, with the hallucination that all the money in the world is to be made in the madness of war and the wildness of its aftermath. Let us stop to consider that tranquillity at home is more precious than peace abroad, and that both our good fortune and our eminence are dependent

on the normal forward stride of all the American people. . . .

We have protected our home market with war's barrage. But the barrage has lifted with the passing of the war. The American people will not heed to-day, because world competition is not yet restored, but the morrow will soon come when the world will seek our markets and our trade balances, and we must think of America first or surrender our eminence.

The thought is not selfish. We want to share with the world in seeking becoming restoration. But peoples will trade and seek wealth in their exchanges, and every conflict in the adjustment of peace was founded on the hope of promoting trade conditions. I heard expressed, before the Foreign Relations Committee of the Senate, the aspirations of nationality and the hope of commerce to develop and expand aspiring peoples. Knowing that those two thoughts are inspiring all humanity, as they have since civilization began, I can only marvel at the American who consents to surrender either. There may be conscience, humanity, and justice in both, and without them the glory of the republic is done. I want to go on, secure and unafraid, holding fast to the American inheritance and confident of the supreme American fulfillment.

14. THE NINETEENTH AMENDMENT

26 AUGUST 1920

[A proposed amendment granting female suffrage was first introduced into the House of Representatives in 1869 and it received little support. In 1868 the Territory of Wyoming had granted women the right to vote and when it became a State in 1890 the privilege was retained. Meanwhile, as repeated efforts to secure the support of Congress had failed, the leaders of the movement turned to the States, and by 1916 eleven States had enfranchised women. In

that year C. E. Hughes, the Republican candidate for the Presidency, gave his support to the proposed amendment. It was passed through Congress in June 1919, and received ratification from three-fourths of the States on 26 August 1920.]

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any States on account of sex.

The Congress shall have power, by appropriate legislation, to enforce the provisions of this Article.

15. THE IMMIGRATION ACT

19 MAY 1921

[The Immigration Act of 1882 had excluded from the United States idiots, convicts, and persons liable to become a charge on the public. Continuous attempts were made in Congress to pass bills providing for a literacy test for immigrants. Such bills were actually passed in 1897, 1913, and 1915, and on each occasion vetoed by the President. However, in 1917 a bill establishing this test was passed over Wilson's veto. The Immigration Act of 1921 went a great deal further by establishing the principles of the "Quota," namely, that the number of immigrants from nationalities in Europe, Australasia, and Africa, and from those parts of Asia not already barred by the 1917 Act, should not exceed 3 per cent. of the total number of persons of that nationality living in the United States in 1910.

The Immigration Act of 1921 marked a revolution in American policy. Its effect on European conditions was profound. The incidence of the Quota served to restrict particularly immigrants coming from the Mediterranean area and the Slav countries, but the restriction was a general one and the disappearance of this outlet for the surplus population of Europe was to be one of the causes of the grave economic troubles in that continent during the years after the war of 1914-1918.

In 1924 a new law was passed which reduced the annual

quota from 3 to 2 per cent. and took as a basis the census of 1890. In 1929 the National Origins Act reduced the total annual number of immigrants to 150,000, at which figure it was fixed. The quotas from European countries were to be settled in proportion to the "national origins" of the American people in 1920. Immigration from other American countries was not affected.

(The figures printed after the extracts from the Act of 1921 are those of the quota list under the Act of 1929, which came into force in 1930).]

The term "Immigration Act" means the Act of 5 February 1917, entitled "An Act to regulate the immigration of aliens to, and the residence of aliens in, the United States"; and the term "immigration laws" includes such Act and all laws, conventions, and treaties of the United States relating to the immigration, exclusion, or expulsion of aliens.

SEC. 2. (a) That the number of aliens of any nationality who may be admitted under the immigration laws to the United States in any fiscal year shall be limited to 3 per centum of the number of foreign-born persons of such nationality resident in the United States as determined by the United States census of 1910. This provision shall not apply to the following, and they shall not be counted in reckoning any of the percentage limits provided in this Act: (1) Government officials, their families, attendants, servants, and employees; (2) aliens in continuous transit through the United States; (3) aliens visiting the United States as tourists or temporarily for business or pleasure; (5) aliens from countries immigration from which is regulated in accordance with treaties or agreements relating solely to immigration; (6) aliens from the so-called Asiatic barred zone, as described in section 3 of the Immigration Act; (7) aliens who have resided continuously for at least one year immediately preceding the time of their admission to the United States in the Dominion of Canada, Newfoundland, the Republic of Cuba, the Republic of Mexico, countries of Central or South America, or adjacent islands; or (8) aliens under

the age of eighteen who are children of citizens of the United States.

(b) For the purposes of this Act nationality shall be determined by country of birth, treating as separate countries the colonies or dependencies for which separate enumeration was made in the United States census of 1910.

(c) The Secretary of State, the Secretary of Commerce, and the Secretary of Labor, jointly, shall, as soon as feasible after the enactment of this Act, prepare a statement showing the number of persons of the various nationalities resident in the United States as determined by the United States census of 1910, which statement shall be the population basis for the purposes of this Act. In case of changes in political boundaries in foreign countries occurring subsequent to 1910 and resulting (1) in the creation of new countries, the Governments of which are recognized by the United States, or (2) in the transfer of territory from one country to another, such transfer being recognized by the United States, such officials, jointly, shall estimate the number of persons resident in the United States in 1910 who were born within the area included in such new countries or in such territory so transferred, and revise the population basis as to each country involved in such change of political boundary. For the purpose of such revision and for the purposes of this Act generally aliens born in the area included in any such new country shall be considered as having been born in such country, and aliens born in any territory so transferred shall be considered as having been born in the country to which such territory was transferred.

(d) When the maximum number of aliens of any nationality who may be admitted in any fiscal year under this Act shall have been admitted all other aliens of such nationality, except as otherwise provided in this Act, who may apply for admission during the same fiscal year shall be excluded: *Provided*, That the number of aliens of any nationality who may be admitted in any month shall not exceed 20 per centum of

the total number of aliens of such nationality who are admissible in that fiscal year. . . .

SEC. 4. That the provisions of this Act are in addition to and not in substitution for the provisions of the immigration laws.

IMMIGRATION QUOTAS, 1930.

<i>Country or Area.</i>	<i>Quota.</i>
Afghanistan	100
Albania	100
Andorra	100
Arabian Peninsula	100
Australia (including Tasmania, Tapua, and all islands appertaining to Australia)	100
Austria	1413
Belgium	1304
Blutan	100
Bulgaria	100
Cameroon (British mandate)	100
Cameroon (French mandate)	100
China	100
Czechoslovakia	2874
Danzig, Free City of	100
Denmark	1181
Egypt	100
Estonia	116
Ethiopia (Abyssinia)	100
Finland	569
France	3086
Germany	25,957
Great Britain and Northern Ireland	65,721
Greece	307
Hungary	869
Iceland	100
India	100
Iraq (Mesopotamia)	100
Irish Free State	17,853
Italy	5802
Japan	100

IMMIGRATION QUOTAS, 1930—*continued.*

<i>Country or Area.</i>	<i>Quota.</i>
Latvia	236
Liberia	100
Liechtenstein	100
Lithuania	386
Luxemburg	100
Monaco	100
Morocco (French and Spanish zones and Tangier)	100
Muscat (Oman)	100
Nauru (British mandate)	100
Nepal	100
Netherlands	3153
New Guinea, Territory of (including apper- taining islands) (Australian mandate)	100
New Zealand	100
Norway	2377
Palestine (with Trans-Jordan) (British mandate)	100
Persia	100
Philippine Islands	50
Poland	6524
Portugal	440
Ruanda and Urundi (Belgian mandate)	100
Rumania	377
Russia, European and Asiatic	2712
Samoa, Western (mandate of New Zealand)	100
San Marino	100
Saudi Arabia (Hejaz and Nejd and its Dependencies)	100
Siam	100
South Africa, Union of	100
South-West Africa (mandate of the Union of South Africa)	100
Spain	252
Sweden	3314
Switzerland	1707
Syria and the Lebanon (French mandate)	123
Tanganyika (British mandate)	100

IMMIGRATION QUOTAS, 1930—*continued*.

<i>Country or Area.</i>	<i>Quota.</i>
Togoland (British mandate)	100
Togoland (French mandate)	100
Turkey	226
Yap and other Pacific Islands under Japanese mandate	100
Yugoslavia	845

16. THE JOINT RESOLUTION DECLARING PEACE WITH GERMANY

2 JULY 1921

[After the failure of the Senate to ratify the Treaty of Versailles with the Covenant of the League of Nations, on 19 May 1920, the Presidential Election of November 1920, when the Republicans won a handsome victory, sealed the issue. On 2 July 1921 Congress passed a Joint Resolution declaring that the state of war with Germany was at an end. The Peace Treaty between the United States and Germany was signed on 25 August 1921.]

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled:

That the state of war declared to exist between the Imperial German Government and the United States of America by the joint resolution of Congress, approved 6 April 1917, is hereby declared at an end.

SEC. 2. That in making this declaration, and as part of it, there are expressly reserved to the United States of America and its nationals any and all rights, privileges, indemnities, reparations, or advantages, together with the right to enforce the same, to which it or they have become entitled under the terms of the Armistice signed 11 November 1918, or any extensions or modifications thereof; or which were acquired by or

are in the possession of the United States of America by reason of its participation in the war or to which its nationals have thereby become rightfully entitled; or which, under the Treaty of Versailles, have been stipulated for its or their benefit; or to which it is entitled by virtue of any Act or Acts of Congress; or otherwise.

17. SECRETARY HUGHES' OPENING SPEECH AT THE WASHINGTON CONFERENCE

12 NOVEMBER 1921

[In November 1921 President Harding called a conference at Washington of the nine Pacific Powers to consider their relations in the Pacific area and the limitation of naval armaments. The opening speech by Mr C. E. Hughes, United States Secretary of State, delivered on 12 November, created a great sensation. It included a bold and detailed plan for the limitation of naval armaments and fortifications in the Pacific.

The plan for naval disarmament may be summarised as follows: that all shipbuilding programmes, actual and projected, of capital ships should be abandoned; that certain older ships should be scrapped; that naval armaments should be based for the future on the existing naval strength of the Powers. For capital ships the ratio between the United States, Great Britain, and Japan should be 5:5:3; that for France and Italy should be decided later.

Japan demanded, at first, a higher proportion, seven to the ten of the other two Powers, but eventually gave way on this point. She also insisted that her battleship, *Mutsu*, then nearing completion, should be finished. This claim was allowed after a considerable sacrifice by the British Government had made it possible. The final Treaty, known as the Five Power Treaty, was signed on 6 February 1922, and laid down the ratio first proposed, with a proportion of 1.7 each for France and Italy; the scrapping of specific ships; a maximum tonnage for capital ships of 35,000 tons,

for aircraft carriers of 27,000, for cruisers of 10,000 tons; a maximum calibre for guns on capital ships of 16 inches and on cruisers of 8 inches; and a naval building holiday for ten years.

The Washington Conference was the only successful disarmament conference. An attempt to settle the problems of cruisers, destroyers, and submarines at the Geneva Conference in 1927 was a failure. A further conference in London in 1930, when the naval holiday was coming to an end, extended this holiday to 1936 and made some changes in the previous arrangement. In 1934 Japan gave notice of her intention to disregard any limitations after 1936, and a second conference in London in 1935 failed to reach agreement.]

Mr Hughes: Gentlemen, it is with a deep sense of privilege and responsibility that I accept the honour you have conferred.

Permit me to express the most cordial appreciation of the assurances of friendly co-operation which have been generously expressed by the representatives of all the invited Governments. The earnest desire and purpose, manifested in every step in the approach to this meeting, that we should meet the reasonable expectation of a watching world by effective action suited to the opportunity, is the best augury for the success of the Conference.

The President invited the Governments of the British Empire, France, Italy, and Japan to participate in a conference on the subject of limitation of armament, in connection with which Pacific and Far Eastern questions would also be discussed. It would have been most agreeable to the President to have invited all the Powers to take part in this Conference, but it was thought to be a time when other considerations should yield to the practical requirements of the existing exigency, and in this view the invitation was extended to the group known as the Principal Allied and Associated Powers, which, by reason of the conditions produced by the war, control in the main the armament of the world. The opportunity to limit armament lies within their grasp. . . .

In the public discussions which have preceded the

Conference there have been apparently two competing views: one, that the consideration of armament should await the result of the discussion of Far Eastern questions, and another, that the latter discussion should be postponed until an agreement for limitation of armament has been reached. I am unable to find sufficient reason for adopting either of these extreme views. I think that it would be most unfortunate if we should disappoint the hopes which have attached to this meeting by a postponement of the consideration of the first subject. The world looks to this Conference to relieve humanity of the crushing burden created by competition in armament, and it is the view of the American Government that we should meet that expectation without any unnecessary delay. It is therefore proposed that the Conference should proceed at once to consider the question of the limitation of armament . . .

The proposal to limit armament by an agreement of the Powers is not a new one, and we are admonished by the futility of earlier efforts . . .

But if we are warned by the inadequacy of earlier endeavours for limitation of armament, we cannot fail to recognize the extraordinary opportunity now presented. We not only have the lessons of the past to guide us, not only do we have the reaction from the disillusioning experiences of war, but we must meet the challenge of imperative economic demands. What was convenient or highly desirable before is now a matter of vital necessity. If there is to be economic rehabilitation, if the longings for reasonable progress are not to be denied, if we are to be spared the uprisings of peoples made desperate in the desire to shake off burdens no longer endurable, competition in armament must stop. The present opportunity not only derives its advantage from a general appreciation of this fact, but the power to deal with the exigency now rests with a small group of nations, represented here, who have every reason to desire peace and to promote amity. The astounding ambition which lay athwart the

promise of the Second Hague Conference no longer menaces the world, and the great opportunity of liberty-loving and peace-preserving democracies has come. Is it not plain that the time has passed for mere resolutions, that the responsible Powers should examine the question of limitation of armament? We can no longer content ourselves with investigations, with statistics, with reports, with the circumlocution of inquiry. The essential facts are sufficiently known. The time has come, and this Conference has been called, not for general resolutions or mutual advice, but for action. We meet with full understanding that the aspirations of mankind are not to be defeated either by plausible suggestions of postponement or by impracticable counsels of perfection. Power and responsibility are here, and the world awaits a practicable programme which shall at once be put into execution.

I am confident that I shall have your approval in suggesting that in this matter, as well as in others before the Conference, it is desirable to follow the course of procedure which has the best promise of achievement rather than one which would facilitate division; and thus, constantly aiming to agree so far as possible, we shall, with each point of agreement, make it easier to proceed to others.

The question, in relation to armament, which may be regarded as of primary importance at this time, and with which we can deal most promptly and effectively, is the limitation of naval armament. There are certain general considerations which may be deemed pertinent to this subject.

The first is that the core of the difficulty is to be found in the competition in naval programmes, and that, in order appropriately to limit naval armament, competition in its production must be abandoned. Competition will not be remedied by resolves with respect to the method of its continuance. One programme inevitably leads to another, and if competition continues, its regulation is impracticable. There is only one adequate way out and that is to end it now.

It is apparent that this cannot be accomplished without serious sacrifices. Enormous sums have been expended upon ships under construction, and building programmes which are now under way cannot be given up without heavy loss. Yet, if the present construction of capital ships goes forward, other ships will inevitably be built to rival them and this will lead to still others. Thus the race will continue so long as ability to continue lasts. The effort to escape sacrifices is futile. We must face them or yield our purpose.

It is also clear that no one of the naval Powers should be expected to make these sacrifices alone. The only hope of limitation of naval armament is by agreement among the nations concerned, and this agreement should be entirely fair and reasonable in the extent of the sacrifices required of each of the Powers. In considering the basis of such an agreement and the commensurate sacrifices to be required, it is necessary to have regard to the existing naval strength of the great naval Powers, including the extent of construction already effected in the case of ships in process. This follows from the fact that one nation is as free to compete as another, and each may find grounds for its action. What one may do, another may demand the opportunity to rival, and we remain in the thrall of competitive effort. I may add that the American delegates are advised by their naval experts that the tonnage of capital ships may fairly be taken to measure the relative strength of navies, as the provision for auxiliary combatant craft should sustain a reasonable relation to the capital ship tonnage allowed.

It would also seem to be a vital part of a plan for the limitation of naval armament that there should be a naval holiday. It is proposed that for a period of not less than ten years there should be no further construction of capital ships.

I am happy to say that I am at liberty to go beyond these general propositions, and, on behalf of the American delegation acting under the instructions of the President of the United States, to submit to you a

concrete proposition for an agreement for the limitation of naval armament.

It should be added that this proposal immediately concerns the British Empire, Japan, and the United States. In view of the extraordinary conditions due to the World War affecting the existing strength of the navies of France and Italy, it is not thought to be necessary to discuss at this stage of the proceedings the tonnage allowance of these nations, but the United States proposes that this matter be reserved for the later consideration of the Conference.

In making the present proposal the United States is most solicitous to deal with the question upon an entirely reasonable and practicable basis, to the end that the just interests of all shall be adequately guarded and that national security and defense shall be maintained. Four general principles have been applied:

(1) That all capital ship building programmes, either actual or projected, should be abandoned.

(2) That further reduction should be made through the scrapping of certain of the older ships.

(3) That, in general, regard should be had to the existing naval strength of the Powers concerned.

(4) That the capital ship tonnage should be used as the measurement of strength for navies and a proportionate allowance of auxiliary combatant craft prescribed.

The principal features of the proposed agreement are as follows:

CAPITAL SHIPS.

United States—

The United States is now completing its program of 1916 calling for 10 new battleships and 6 battle cruisers.

One battleship has been completed. The others are in various stages of construction; in some cases from 60 to over 80 per cent. of the construction has been done. On these 15 capital ships now being built over \$330,000,000 have been spent. Still, the United States

is willing, in the interest of an immediate limitation of naval armament, to scrap all these ships.

The United States proposes, if this plan is accepted—

(1) To scrap all capital ships now under construction. This includes 6 battle cruisers and 7 battleships on the ways and in course of building, and 2 battleships launched.

The total number of new capital ships thus to be scrapped is 15. The total tonnage of the new capital ships when completed would be 618,000 tons.

(2) To scrap all of the older battleships up to, but not including, the *Delaware* and *North Dakota*. The number of these old battleships to be scrapped is 15. Their total tonnage is 227,740 tons.

Thus the number of capital ships to be scrapped by the United States, if this plan is accepted, is 30, with an aggregate tonnage (including that of ships in construction, if completed) of 845,740 tons.

Great Britain—

The plan contemplates that Great Britain and Japan shall take action which is fairly commensurate with the action on the part of the United States.

It is proposed that Great Britain—

(1) Shall stop further construction of the 4 new *Hoods*, the new capital ships not laid down but upon which money has been spent. These 4 ships, if completed, would have tonnage displacement of 172,000 tons.

(2) Shall, in addition, scrap her predreadnaughts, second-line battleships, and first-line battleships up to but not including the *King George V* class.

These, with certain predreadnaughts which it is understood have already been scrapped, would amount to 19 capital ships and a tonnage reduction of 411,375 tons.

The total tonnage of ships thus to be scrapped by Great Britain (including the tonnage of the 4 *Hoods*, if completed) would be 583,375 tons.

Japan—

It is proposed that Japan—

(1) Shall abandon her program of ships not yet laid down, viz., the *Kii*, *Owari*, No. 7 and No. 8, battle-ships, and Nos. 5, 6, 7, and 8, battle cruisers.

It should be observed that this idea does not involve the stopping of construction, as the construction of none of these ships has been begun.

(2) Shall scrap 3 capital ships: the *Mutsu* launched, the *Tosa* and *Kaga* in course of building; and 4 battle-cruisers: the *Amagi* and *Akagi* in course of building, and the *Atoga* and *Takao* not yet laid down but for which certain material has been assembled.

The total number of new capital ships to be scrapped under this paragraph is 7. The total tonnage of these new capital ships when completed would be 289,100 tons.

(3) Shall scrap all predreadnaughts and battleships of the second line. This would include the scrapping of all ships up to but not including the *Settsu*; that is, the scrapping of 10 older ships, with a total tonnage of 159,828 tons.

The total reduction of tonnage on vessels existing, laid down, or for which material has been assembled (taking the tonnage of the new ships when completed) would be 448,928 tons.

The Three Powers—

Thus, under this plan there would be immediately destroyed, of the navies of the three Powers, 66 capital fighting ships, built and building, with a total tonnage of 1,878,043.

It is proposed that it should be agreed by the United States, Great Britain, and Japan that their navies, with respect to capital ships, within three months after the making of the agreement shall consist of certain ships designated in the proposal and numbering for the United States 18, for Great Britain 22, for Japan 10.

The tonnage of these ships would be as follows: of the United States, 500,650, of Great Britain, 604,450; of

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Japan, 299,700. In reaching this result, the age factor in the case of the respective navies has received appropriate consideration.

Replacement—

With respect to replacement, the United States proposes—

(1) That it be agreed that the first replacement tonnage shall not be laid down until 10 years from the date of the agreement.

(2) That replacement be limited by an agreed maximum of capital ship tonnage as follows:

For the United States	. . .	500,000 tons.
For Great Britain	. . .	500,000 tons.
For Japan	. . .	300,000 tons.

(3) That, subject to the 10-year limitation above fixed and the maximum standard, capital ships may be replaced when they are 20 years old by new capital ship construction.

(4) That no capital ship shall be built in replacement with a tonnage displacement of more than 35,000 tons.

I have sketched the proposal only in outline, leaving the technical details to be supplied by the formal proposition which is ready for submission to the delegates.

The plan includes provision for the limitation of auxiliary combatant craft. This term embraces three classes—that is: (1) auxiliary surface combatant craft, such as cruisers (exclusive of battle cruisers), flotilla leaders, destroyers, and various surface types; (2) submarines; and (3) airplane carriers.

I shall not attempt to review the proposals for these various classes, as they bear a definite relation to the provisions for capital fighting ships.

With the acceptance of this plan the burden of meeting the demands of competition in naval armament will be lifted. Enormous sums will be released to aid the progress of civilization. At the same time the proper demands of national defense will be adequately met and the nations will have ample opportunity

during the naval holiday of 10 years to consider their future course. Preparation for offensive naval war will stop now.

I shall not attempt at this time to take up the other topics which have been listed upon the tentative agenda proposed in anticipation of the Conference.

18. THE NINE-POWER TREATY

6 FEBRUARY 1922

[The Washington Conference, which assembled in November 1921, was concerned not only with naval disarmament and Pacific fortifications, but also with the international status of China. During the War of 1914-1918 Japan had greatly extended its power in China, and in 1921 it had control of Eastern Siberia, Manchuria, and the Shantung peninsula. The Nine-Power Treaty, signed on 6 February 1922, marked a retreat on the part of Japan, which evacuated its forces from Siberia and Shantung. The nine Pacific Powers agreed to respect the independence and integrity of China and to abandon the practice of creating "spheres of influence."

Japan, however, was only biding its time. In September 1931 Japanese troops guarding the railway in Manchuria began the seizure of that province, which became in 1932 the puppet kingdom of Manchukuo. This complete defiance of the Nine-Power Treaty was followed in 1937 by the beginning of the Japanese attempt to conquer China.]

A Treaty . . . relating to Principles and Policies to be followed in matters concerning China.

The United States of America, Belgium, the British Empire, China, France, Italy, Japan, the Netherlands, and Portugal:

Desiring to adopt a policy designed to stabilize conditions in the Far East, to safeguard the rights and interests of China, and to promote intercourse between China

and the other Powers upon the basis of equality of opportunity;

Have resolved to conclude a treaty for that purpose and to that end have appointed as their respective Plenipotentiaries: . . .

Who, having communicated to each other their full powers, found to be in good and due form, have agreed as follows:

I. The Contracting Powers, other than China, agree:

(1) To respect the sovereignty, the independence, and the territorial and administrative integrity of China;

(2) To provide the fullest and most unembarrassed opportunity to China to develop and maintain for herself an effective and stable government;

(3) To use their influence for the purpose of effectually establishing and maintaining the principle of equal opportunity for the commerce and industry of all nations throughout the territory of China;

(4) To refrain from taking advantage of conditions in China in order to seek special rights or privileges which would abridge the rights of subjects or citizens of friendly States, and form countenancing action inimical to the security of such States.

II. The Contracting Powers agree not to enter into any treaty, agreement, arrangement, or understanding, either with one another, or individually or collectively, with any Power or Powers, which would infringe or impair the principles stated in Article I.

III. With a view to applying more effectually the principles of the Open Door or equality of opportunity in China for the trade and industry of all nations, the Contracting Powers, other than China, agree that they will not seek nor support their respective nationals in seeking

(a) any arrangement which might purport to establish in favor of their interests any general superiority of rights with respect to commercial or economic development in any designated region of China;

(b) any such monopoly or preference as would deprive the nationals of any other Power of the right of undertaking any legitimate trade or industry in China, or of participating with the Chinese Government, or with any local authority, in any category of public enterprise, or which by reason of its scope, duration, or geographical extent is calculated to frustrate the practical application of the principle of equal opportunity.

It is understood that the foregoing stipulations of this Article are not to be so construed as to prohibit the acquisition of such properties or rights as may be necessary to the conduct of a particular commercial, industrial, or financial undertaking or to the encouragement of invention and research.

China undertakes to be guided by the principles stated in the foregoing stipulations of this Article in dealing with applications for economic rights and privileges from Governments and nationals of all foreign countries, whether parties to the present Treaty or not.

IV. The Contracting Powers agree not to support any agreements by their respective nationals with each other designed to create Spheres of Influence or to provide for the enjoyment of mutually exclusive opportunities in designated parts of Chinese territory.

V. China agrees that, throughout the whole of the railways in China, she will not exercise or permit unfair discrimination of any kind. In particular, there shall be no discrimination whatever, direct or indirect, in respect of charges or of facilities on the ground of the nationality of passengers, or the countries from which or to which they are proceeding, or the origin or ownership of goods or the country from which or to which they are consigned, or the nationality or ownership of the ship or other means of conveying such passengers or goods before or after their transport on the Chinese railways.

The Contracting Powers, other than China, assume a corresponding obligation in respect of any of the aforesaid railways over which they or their nationals

are in a position to exercise any control in virtue of any concession, special agreement or otherwise.

VI. The Contracting Powers, other than China, agree fully to respect China's rights as a neutral in time of war to which China is not a party; and China declares that when she is a neutral she will observe the obligations of neutrality.

VII. The Contracting Powers agree that, whenever a situation arises which in the opinion of any one of them involves the application of the stipulations of the present Treaty, and renders desirable discussion of such application, there shall be full and frank communication between the Contracting Powers concerned.

VIII. Powers not signatory to the present Treaty, which have Governments recognized by the Signatory Powers and which have treaty relations with China, shall be invited to adhere to the present Treaty. To this end the Government of the United States will make the necessary communications to non-signatory Powers and will inform the Contracting Powers of the replies received. Adherence by any Power shall become effective on receipt of notice thereof by the Government of the United States.

IX. The present Treaty shall be ratified by the Contracting Powers in accordance with their respective constitutional methods and shall take effect on the date of the deposit of all the ratifications, which shall take place at Washington as soon as possible. The Government of the United States will transmit to the other Contracting Powers a certified copy of the *procès-verbal* of the deposit of ratifications.

The present Treaty, of which the French and English texts are both authentic, shall remain deposited in the archives of the Government of the United States, and duly certified copies thereof shall be transmitted by that Government to the other Contracting Powers.

In faith whereof the above-named Plenipotentiaries have signed the Present Treaty.

Done at the City of Washington the sixth day of February One Thousand Nine Hundred and Twenty-Two.

19. ADKINS v. CHILDREN'S HOSPITAL

1923

[The first minimum wage law was enacted by Massachusetts in 1913 and applied to women and children. In 1916 the Supreme Court upheld a minimum wage law of the State of Oregon. But in 1923, in the case of *Adkins v. Children's Hospital*, it declared invalid an Act of Congress, which, in 1918, had empowered a Wage Board in the District of Columbia to fix minimum wages for women. This judgment checked all legislation for minimum wages in industry until the Court reversed its decision, in 1937, in the case of *West Coast Hotel v. Parrish* (No. 42).]

SUTHERLAND, J. The question presented for determination by these appeals is the constitutionality of the Act of 19 September 1918, providing for the fixing of minimum wages for women and children in the District of Columbia. . . .

It is declared that the purposes of the Act are "to protect the women and minors of the District from conditions detrimental to their health and morals, resulting from wages which are inadequate to maintain decent standards of living; and the Act, in each of its provisions and in its entirety, shall be interpreted to effectuate these purposes." . . .

The statute now under consideration is attacked upon the ground that it authorizes an unconstitutional interference with the freedom of contract included within the guaranties of the due process clause of the Fifth Amendment. That the right to contract about one's affairs is a part of the liberty of the individual protected by this clause is settled by the decisions of this Court, and is no longer open to question. . . . Within this liberty are contracts of employment of labor. In making such contracts, generally speaking, the parties have an equal right to obtain from each other the best terms they can as the result of private bargaining. . . .

There is, of course, no such thing as absolute freedom of contract. It is subject to a great variety of restraints. But freedom of contract is, nevertheless, the general rule, and restraint the exception; and the exercise of legislative authority to abridge it can be justified only by the existence of exceptional circumstances. Whether these circumstances exist in the present case constitutes the question to be answered. . . .

If now, in the light furnished by the foregoing exceptions to the general rule forbidding legislative interference with freedom of contract, we examine and analyze the statute in question, we shall see that it differs from them in every material respect. It is not a law dealing with any business charged with a public interest, or with public work, or to meet and tide over a temporary emergency. It has nothing to do with the character, methods, or periods of wage payments. It does not prescribe hours of labor or conditions under which labor is to be done. It is not for the protection of persons under legal disability or for the prevention of fraud. It is simply and exclusively a price-fixing law, confined to adult women (for we are not now considering the provisions relating to minors), who are legally as capable of contracting for themselves as men. It forbids two parties having lawful capacity—under penalties as to the employer—to freely contract with one another in respect of the price for which one shall render service to the other in a purely private employment where both are willing, perhaps anxious, to agree, even though the consequence may be to oblige one to surrender a desirable engagement and the other to dispense with the services of a desirable employee. The price fixed by the board need have no relation to the capacity or earning power of the employee, the number of hours which may happen to constitute the day's work, the character of the place where the work is to be done, or the circumstances or surroundings of the employment; and, while it has no other basis to support its validity than the assumed necessities of the employee, it takes no account of any independent resources she

may have. It is based wholly on the opinions of the members of the board and their advisers—perhaps an average of their opinions, if they do not precisely agree—as to what will be necessary to provide a living for a woman, keep her in health, and preserve her morals. It applies to any and every occupation in the District, without regard to its nature or the character of the work.

The standard furnished by the statute for the guidance of the board is so vague as to be impossible of practical application with any reasonable degree of accuracy. What is sufficient to supply the necessary cost of living for a woman worker and maintain her in good health and protect her morals is obviously not a precise or unvarying sum—not even approximately so. The amount will depend upon a variety of circumstances: the individual temperament, habits of thrift, care, ability to buy necessaries intelligently, and whether the woman live alone or with her family. To those who practice economy, a given sum will afford comfort, while to those of a contrary habit the same sum will be wholly inadequate. The co-operative economies of the family group are not taken into account though they constitute an important consideration in estimating the cost of living, for it is obvious that the individual expense will be less in the case of a member of a family than in the case of one living alone. The relation between earnings and morals is not capable of standardization. It cannot be shown that well-paid women safeguard their morals more carefully than those who are poorly paid. Morality rests upon other considerations than wages; and there is, certainly, no such prevalent connection between the two as to justify a broad attempt to adjust the latter with reference to the former. As a means of safeguarding morals, the attempted classification, in our opinion, is without reasonable basis. No distinction can be made between women who work for others and those who do not; nor is there ground for distinction between women and men, for, certainly, if women require a minimum wage to preserve their morals, men require it

to preserve their honesty. For these reasons, and others which might be stated, the inquiry in respect of the necessary cost of living, and of the income necessary to preserve health and morals, presents an individual and not a composite question, and must be answered for each individual considered by herself and not by a general formula prescribed by a statutory bureau. . . .

The law takes account of the necessities of only one party to the contract. It ignores the necessities of the employer by compelling him to pay not less than a certain sum, not only whether the employee is capable of earning it, but irrespective of the ability of his business to sustain the burden, generously leaving him, of course, the privilege of abandoning his business as an alternative for going on at a loss. Within the limits of the minimum sum, he is precluded, under penalty of fine and imprisonment, from adjusting compensation to the differing merits of his employees. It compels him to pay at least the sum fixed in any event, because the employee needs it, but requires no service of equivalent value from the employee. It therefore undertakes to solve but one half of the problem. The other half is the establishment of a corresponding standard of efficiency, and this forms no part of the policy of the legislation, although in practice the former half without the latter must lead to ultimate failure, in accordance with the inexorable law that no one can continue indefinitely to take out more than he puts in without ultimately exhausting the supply. The law is not confined to the great and powerful employers, but embraces those whose bargaining power may be as weak as that of the employee. It takes no account of periods of stress and business depression, of crippling losses, which may leave the employer himself without adequate means of livelihood. To the extent that the sum fixed exceeds the fair value of the services rendered, it amounts to a compulsory exaction from the employer for the support of a partially indigent person, for whose condition there rests upon him no peculiar responsibility, and therefore, in effect, arbitrarily shifts to his shoulders a

burden which, if it belongs to anybody, belongs to society as a whole.

The feature of this statute, which perhaps more than any other puts upon it the stamp of invalidity, is that it exacts from the employer an arbitrary payment for a purpose and upon a basis having no causal connection with his business, or the contract or the work the employee engages to do. The declared basis, as already pointed out, is not the value of the service rendered, but the extraneous circumstances that the employee needs to get a prescribed sum of money to insure her subsistence, health, and morals. The ethical right of every worker, man or woman, to a living wage may be conceded. One of the declared and important purposes of trade organizations is to secure it. And with that principle, and with every legitimate effort to realize it in fact, no one can quarrel; but the fallacy of the proposed method of attaining it is that it assumes that every employer is bound at all events to furnish it. The moral requirement implicit in every contract of employment, viz., that the amount to be paid and the service to be rendered shall bear to each other some relation of just equivalence, is completely ignored. The necessities of the employee are alone considered and these arise outside of the employment, are the same when there is no employment, and as great in one occupation as in another. Certainly the employer by paying a fair equivalent for the service rendered, though not sufficient to support the employee, has neither caused nor contributed to her poverty. On the contrary, to the extent of what he pays, he has relieved it. In principle, there can be no difference between the case of selling labor and the case of selling goods. If one goes to the butcher, the baker, or grocer to buy food, he is morally entitled to obtain the worth of his money, but he is not entitled to more. If what he gets is worth what he pays, he is not justified in demanding more simply because he needs more; and the shopkeeper, having dealt fairly and honestly in that transaction, is not concerned in any peculiar sense with the question of his customer's

necessities. Should a statute undertake to vest in a commission power to determine the quantity of food necessary for individual support and require the shopkeeper, if he sell to the individual at all, to furnish that quantity at not more than a fixed maximum, it would undoubtedly fall before the constitutional test. The fallacy of any argument in support of the validity of such a statute would be quickly exposed. The argument in support of that now being considered is equally fallacious, though the weakness of it may not be so plain. A statute requiring an employer to pay in money, to pay at prescribed and regular intervals, to pay the value of the services rendered, even to pay with fair relation to the extent of the benefit obtained from the service, would be understandable. But a statute which prescribes payment without regard to any of these things and solely with relation to circumstances apart from the contract of employment, the business affected by it and the work done under it, is so clearly the product of a naked, arbitrary exercise of power that it cannot be allowed to stand under the Constitution of the United States. . . .

Finally, it may be said that if, in the interest of the public welfare, the police power may be invoked to justify the fixing of a minimum wage, it may, when the public welfare is thought to require it, be invoked to justify a maximum wage. The power to fix high wages connotes, by like reasoning, the power to fix low wages. If, in the face of the guaranties of the 5th Amendment, this form of legislation shall be legally justified, the field for the operation of the police power will have been widened to a great and dangerous degree. If, for example, in the opinion of future lawmakers, wages in the building trades shall become so high as to preclude people of ordinary means from building and owning homes, an authority which sustains the minimum wage will be invoked to support a maximum wage for building laborers and artisans, and the same argument which has been here urged to strip the employer of his constitutional liberty of contract in one direction will be

utilized to strip the employee of his constitutional liberty of contract in the opposite direction. A wrong decision does not end with itself; it is a precedent, and, with the swing of sentiment, its bad influence may run from one extremity of the arc to the other.

It has been said that legislation of the kind now under review is required in the interest of social justice, for whose ends freedom of contract may lawfully be subjected to restraint. The liberty of the individual to do as he pleases, even in innocent matters, is not absolute. It must frequently yield to the common good, and the line beyond which the power of interference may not be pressed is neither definite nor unalterable but may be made to move, within limits not well defined, with changing need and circumstance. Any attempt to fix a rigid boundary would be unwise and futile. But, nevertheless, there are limits to the power, and when these have been passed, it becomes the plain duty of the courts in the proper exercise of their authority to so declare. To sustain the individual freedom of action contemplated by the Constitution, is not to strike down the common good but to exalt it; for surely the good of society as a whole cannot be better served than by the preservation against arbitrary restraint of the liberties of its constituent members.

It follows from what has been said that the Act in question passes the limit prescribed by the Constitution, and, accordingly, the decrees of the court below are Affirmed.

20. THE PROPOSED TWENTY-SECOND AMENDMENT, 1924

[Under the Commerce Clause, Congress is able to enact labour regulations in Interstate Commerce. In 1916 it passed the Keating-Owen Act prohibiting the transportation in Interstate Commerce of goods from factories where children under fourteen had been employed at all, or children

between the ages of sixteen and eighteen employed for more than eight hours a day, or six days a week, or between 7 p.m. and 6 a.m. But the Supreme Court, in the case of *Hammer v. Dagenhart et al.* (1918), held that the Act was unconstitutional, as it was a breach of the Tenth Amendment. In 1919 Congress returned to the attack by levying a special tax on goods manufactured by child labour. However, the Supreme Court, in the case of *Bailey v. Drexel Furniture Company* (1922), held the tax to be a breach of the Tenth Amendment. On 2 June 1924 Congress passed an Amendment to the Constitution giving Congress power to regulate child labour. This has been ratified by nearly thirty States, but its prospects of complete ratification are very dubious.]

Section 1.

The Congress shall have power to limit, regulate, and prohibit the labor of persons under eighteen years of age.

Section 2.

The power of the several States is unimpaired by this article except that the operation of State laws shall be suspended to the extent necessary to give effect to legislation enacted by the Congress.

21. THE KELLOGG PEACE PACT

27 AUGUST 1928

[In 1927 the French Government proposed to the United States a treaty outlawing war between the two countries. Frank Kellogg, the United States Secretary of State, took the opportunity to propose a pact on the same lines between all nations. On 27 August 1928 the Pact was signed at Paris by the representatives of fifteen States, including the United States, Great Britain, France, Germany, Italy, and Japan. Eventually sixty-two States adhered to the Pact. It was ratified by the Senate on 4 December 1928.]

The President of the German Reich, the President of the United States of America, His Majesty the King

of the Belgians, the President of the French Republic, His Majesty the King of Great Britain, Ireland, and the British Dominions beyond the Seas, Emperor of India, His Majesty the King of Italy, His Majesty the Emperor of Japan, the President of the Republic of Poland, the President of the Czechoslovak Republic,

Deeply sensible of their solemn duty to promote the welfare of mankind;

Persuaded that the time has come when a frank renunciation of war as an instrument of national policy should be made to the end that the peaceful and friendly relations now existing between their peoples may be perpetuated;

Convinced that all changes in their relations with one another should be sought only by pacific means and be the result of a peaceful and orderly process, and that any signatory Power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this treaty;

Hopeful that, encouraged by their example, all the other nations of the world will join in this humane endeavor and by adhering to the present treaty as soon as it comes into force bring their peoples within the scope of its beneficent provisions, thus uniting the civilized nations of the world in a common renunciation of war as an instrument of their national policy;

Have decided to conclude a treaty and for that purpose have appointed as their respective plenipotentiaries: . . .

Who, having communicated to one another their full powers found in good and due form, have agreed upon the following articles:

ART. 1. The high contracting parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.

ART. 2. The high contracting parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which

may arise among them, shall never be sought except by pacific means.

ART. 3. The present treaty shall be ratified by the high contracting parties named in the preamble in accordance with their respective constitutional requirements, and shall take effect as between them as soon as all their several instruments of ratification shall have been deposited at Washington.

This treaty shall, when it has come into effect as prescribed in the preceding paragraph, remain open as long as may be necessary for adherence by all the other Powers of the world. Every instrument evidencing the adherence of a Power shall be deposited at Washington and the treaty shall immediately, upon such deposit, become effective as between the Power thus adhering and the other Powers parties hereto. . . .

22. HERBERT HOOVER'S SPEECH AT NEW YORK CITY

22 OCTOBER 1928

[In 1928 the United States was at the summit of a period of industrial prosperity. The Republican Party chose as its candidate in the presidential election Herbert Hoover, Secretary of Commerce since 1921, who had a great reputation as an administrator; the Democrats chose Al Smith, Governor of New York, a brilliant radical statesman. The election was a resounding success for the Republican candidate, who gained 444 electoral votes to 87 and a popular majority of over six millions. For the first time the "Solid South" was broken.

In his election campaign Hoover propounded his belief in "rugged individualism," and attacked all forms of State control as inefficient and un-American. His statement in his final election speech on 22 October 1928, that the United States had "come nearer to the abolition of poverty, to the abolition of fear of want, than humanity has ever reached before," seemed reasonable enough at the time, though

there were over a million unemployed, and agriculture, mining, and textiles were all in a depressed condition. Almost exactly a year later, on 29 October 1929, came the great Wall Street collapse, which heralded the most terrible depression in American history.]

.... After the war, when the Republican party assumed administration of the country, we were faced with the problem of determination of the very nature of our national life. During one hundred and fifty years we have builded up a form of self-government and a social system which is peculiarly our own. It differs essentially from all others in the world. It is the American system. It is just as definite and positive a political and social system as has ever been developed on earth. It is founded upon a particular conception of self-government in which decentralized local responsibility is the very base. Further than this, it is founded upon the conception that only through ordered liberty, freedom, and equal opportunity to the individual will his initiative and enterprise spur on the march of progress. And in our insistence upon equality of opportunity has our system advanced beyond all the world.

During the war we necessarily turned to the Government to solve every difficult economic problem. The Government having absorbed every energy of our people for war, there was no other solution. For the preservation of the State the Federal Government became a centralized despotism which undertook unprecedented responsibilities, assumed autocratic powers, and took over the business of citizens. To a large degree we regimented our whole people temporarily into a socialistic State. However justified in time of war, if continued in peace-time it would destroy not only our American system but with it our progress and freedom as well.

When the war closed, the most vital of all issues both in our own country and throughout the world was whether governments should continue their war-time ownership and operation of many instrumentalities of production and distribution. We were challenged with

a peace-time choice between the American system of rugged individualism and a European philosophy of diametrically opposed doctrines—doctrines of paternalism and State socialism. The acceptance of these ideas would have meant the destruction of self-government through centralization of government. It would have meant the undermining of the individual initiative and enterprise through which our people have grown to unparalleled greatness. . . .

There has been revived in this campaign, however, a series of proposals which, if adopted, would be a long step toward the abandonment of our American system and a surrender to the destructive operation of governmental conduct of commercial business. Because the country is faced with difficulty and doubt over certain national problems—that is, prohibition, farm relief, and electrical power—our opponents propose that we must thrust government a long way into the businesses which give rise to these problems. In effect, they abandon the tenets of their own party and turn to State socialism as a solution for the difficulties presented by all three. It is proposed that we shall change from prohibition to the State purchase and sale of liquor. If their agricultural relief program means anything, it means that the Government shall directly or indirectly buy and sell and fix prices of agricultural products. And we are to go into the hydro-electric power business. In other words, we are confronted with a huge program of government in business.

There is, therefore, submitted to the American people a question of fundamental principle. That is, shall we depart from the principles of our American political and economic system, upon which we have advanced beyond all the rest of the world, in order to adopt methods based on principles destructive of its very foundations? And I wish to emphasize the seriousness of these proposals. I wish to make my position clear; for this goes to the very roots of American life and progress.

I should like to state to you the effect that this pro-

jection of government in business would have upon our system of self-government and our economic system. That effect would reach to the daily life of every man and woman. It would impair the very basis of liberty and freedom not only for those left outside the fold of expanded bureaucracy but for those embraced within it.

Let us first see the effect upon self-government. When the Federal Government undertakes to go into commercial business it must at once set up the organization and administration of that business, and it immediately finds itself in a labyrinth, every alley of which leads to the destruction of self-government. . . .

It is a false liberalism that interprets itself into the government operation of commercial business. Every step of bureaucratizing of the business of our country poisons the very roots of liberalism—that is, political equality, free speech, free assembly, free press, and equality of opportunity. It is the road not to more liberty, but to less liberty. Liberalism should be found not striving to spread bureaucracy, but striving to set bounds to it. True liberalism seeks all legitimate freedom first in the confident belief that without such freedom the pursuit of all other blessings and benefits is vain. That belief is the foundation of all American progress, political as well as economic.

Liberalism is a force truly of the spirit, a force proceeding from the deep realization that economic freedom cannot be sacrificed if political freedom is to be preserved. Even if governmental conduct of business could give us more efficiency instead of less efficiency, the fundamental objection to it would remain unaltered and unabated. It would destroy political equality. It would increase rather than decrease abuse and corruption. It would stifle initiative and invention. It would undermine the development of leadership. It would cramp and cripple the mental and spiritual energies of our people. It would extinguish equality and opportunity. It would dry up the spirit of liberty and progress. For these reasons primarily it must be resisted. For a

hundred and fifty years liberalism has found its true spirit in the American system, not in the European systems.

I do not wish to be misunderstood in this statement. I am defining a general policy. It does not mean that our Government is to part with one iota of its national resources without complete protection to the public interest. I have already stated that where the Government is engaged in public works for purposes of flood control, of navigation, of irrigation, of scientific research or national defense, or in pioneering a new art, it will at times necessarily produce power or commodities as a by-product. But they must be a by-product of the major purpose, not the major purpose itself.

Nor do I wish to be misinterpreted as believing that the United States is free-for-all and devil-take-the-hindmost. The very essence of equality of opportunity and of American individualism is that there shall be no domination by any group or combination in this republic, whether it be business or political. On the contrary, it demands economic justice as well as political and social justice. It is no system of *laissez-faire*.

I feel deeply on this subject, because during the war I had some practical experience with governmental operation and control. I have witnessed not only at home but abroad the many failures of government in business. I have seen its tyrannies, its injustices, its destructions of self-government, its undermining of the very instincts which carry our people forward to progress. I have witnessed the lack of advance, the lowered standards of living, the depressed spirits of people working under such a system. My objection is based not upon theory or upon a failure to recognize wrong or abuse, but I know the adoption of such methods would strike at the very roots of American life and would destroy the very basis of American progress.

Our people have the right to know whether we can continue to solve our great problems without abandonment of our American system. I know we can. . . .

And what have been the results of the American system? Our country has become the land of opportunity to those born without inheritance, not merely because of the wealth of its resources and industry, but because of this freedom of initiative and enterprise. Russia has natural resources equal to ours. Her people are equally industrious, but she has not had the blessings of one hundred and fifty years of our form of government and our social system.

By adherence to the principles of decentralized self-government, ordered liberty, equal opportunity, and freedom to the individual, our American experiment in human welfare has yielded a degree of well-being unparalleled in all the world. It has come nearer to the abolition of poverty, to the abolition of fear of want, than humanity has ever reached before. Progress of the past seven years is the proof of it. This alone furnishes the answer to our opponents, who ask us to introduce destructive elements into the system by which this has been accomplished. . . .

I have endeavored to present to you that the greatness of America has grown out of a political and social system and a method of control of economic forces distinctly its own—our American system—which has carried this great experiment in human welfare further than ever before in all history. We are nearer to-day to the ideal of the abolition of poverty and fear from the lives of men and women than ever before in any land. And I again repeat that the departure from our American system by injecting principles destructive to it, which our opponents propose, will jeopardize the very liberty and freedom of our people, and will destroy equality of opportunity not alone to ourselves but to our children. . . .

23. HOOVER'S DECLARATION OF A MORATORIUM ON WAR DEBTS

20 JUNE 1931

[During the War of 1914-1918 and the period following the Armistice the United States had lent to the other Allied countries rather over ten billion dollars. The Allies made funding agreements with the American Government, and it was at first hoped that the sums collected in Reparations from Germany would cover the amount to be paid to the United States. It soon became clear, however, that Germany was not going to be able to pay the necessary sums. She was only able to pay as much as she did by means of extensive borrowing in the United States.

The economic depression of 1931 led to the complete cessation of German payments and to an imminent financial collapse in Europe. The United States had never admitted that there was any connection between the Allied "war debts" and Reparations, but the situation was so serious that, on 20 June 1931, President Hoover issued an announcement advocating a Moratorium on War Debts and Reparations from 30 June 1931 for one year. The proposal was approved by Congress, but very badly received in France, and it was not until 6 July that the French Government gave its acceptance. This delay undid much of the good that might have followed from the President's move. Before 30 June 1932 Reparations from Germany had come to an end at the Lausanne Conference. Although the Allies continued to pay their next instalments on the debts, in 1933 the payment of War Debts to the United States ceased, except for the case of Finland.]

The American government proposes the postponement during one year of all payments on inter-governmental debts, reparations, and relief debts, both principal and interest, of course not including obligations of governments held by private parties. Subject to confirmation by Congress, the American government will postpone all payments upon the debts of foreign governments to the American government payable during the fiscal year beginning 1 July next,

conditional on a like postponement for one year of all payments on inter-governmental debts owing the important creditor Powers.

This course of action has been approved by the following Senators:

Henry F. Ashurst, Hiram Bingham, William E. Borah, James F. Byrnes, Arthur Capper, Simon D. Fess, Duncan U. Fletcher, Carter Glass, William J. Harris, Pat Harrison, Cordell Hull, William H. King, Dwight W. Morrow, George H. Moses, David A. Reed, Claude A. Swanson, Arthur Vandenberg, Robert F. Wagner, David I. Walsh, Thomas J. Walsh, James E. Watson.

And by the following Representatives:

Isaac Bacharach, Joseph W. Byrns, Carl R. Chindblom, Frank Crowther, James W. Collier, Charles R. Crisp, Thomas H. Cullen, George P. Darrow, Harry A. Estep, Willis C. Hawley, Carl E. Mapes, J. C. McLaughlin, Earl C. Michener, C. William Ramseyer, Bertrand H. Snell, John Q. Tilson, Allen T. Treadway, and Will R. Wood.

It has been approved by Ambassador Charles G. Dawes and by Mr Owen D. Young.

The purpose of this action is to give the forthcoming year to the economic recovery of the world and to help free the recuperative forces already in motion in the United States from retarding influences from abroad.

The world-wide depression has affected the countries of Europe more severely than our own. Some of these countries are feeling to a serious extent the drain of this depression on national economy. The fabric of inter-governmental debts, supportable in normal times, weighs heavily in the midst of this depression.

From a variety of causes arising out of the depression, such as the fall in the price of foreign commodities and the lack of confidence in economic and political stability abroad, there is an abnormal movement of gold into the United States which is lowering the credit stability of many foreign countries. These and the other difficulties abroad diminish buying power for our exports

and in a measure are the cause of our continued unemployment and continued lower prices to our farmers.

Wise and timely action should contribute to relieve the pressure of these adverse forces in foreign countries and should assist in the re-establishment of confidence, thus forwarding political peace and economic stability in the world.

Authority of the President to deal with this problem is limited, as this action must be supported by the Congress. It has been assured the cordial support of leading members of both parties in the Senate and the House. The essence of this proposition is to give time to permit debtor governments to recover their national prosperity. I am suggesting to the American people that they be wise creditors in their own interest and be good neighbors.

I wish to take this occasion also to frankly state my views upon our relations to German reparations and the debts owed to us by the Allied governments of Europe. Our government has not been a party to, or exercised any voice in determination of, reparation obligations. We purposely did not participate in either general reparations or the division of colonies or property. The repayment of debts due to us from the Allies for the advances for war and reconstruction was settled upon a basis not contingent upon German reparations or related thereto. Therefore, reparations is necessarily wholly a European problem with which we have no relation.

I do not approve in any remote sense of the cancellation of the debts to us. World confidence would not be enhanced by such action. None of our debtor nations has ever suggested it. But as the basis of the settlement of these debts was the capacity under normal conditions of the debtor to pay, we should be consistent with our own policies and principles if we take into account the abnormal situation now existing in the world. I am sure the American people have no desire to attempt to extract any sum beyond the capacity of any debtor to pay, and it is our view that broad vision requires that

our government should recognize the situation as it exists.

This course of action is entirely consistent with the policy which we have hitherto pursued. We are not involved in the discussion of strictly European problems, of which the payment of German reparations is one. It represents our willingness to make a contribution to the early restoration of world prosperity in which our own people have so deep an interest.

I wish further to add that while this action has no bearing on the conference for limitation of land armaments to be held next February, inasmuch as the burden of competitive armaments has contributed to bring about this depression, we trust that by this evidence of our desire to assist we shall have contributed to the goodwill which is so necessary to the solution of this major question.

24. THE TWENTIETH AMENDMENT

6 FEBRUARY 1933

[One of the last acts of the Congress of the Confederation had been to declare that the new Constitution would come into force on 4 March 1789, and it followed that from that time all future Presidents, Vice-Presidents, Senators, and Representatives would begin their terms of office on that day in the year. By Acts passed in 1871 and 1872 Congress laid it down that the elections for the House of Representatives should be held in all States, except Maine, on the Tuesday following the first Monday in November. The old Congress, therefore, remained in power for four months after the election of the new, and as a session always began in December, members who had already been defeated would be still legislating for the country. These members were known as "lame ducks."

The Twentieth Amendment, sometimes known as the "Norris Amendment," after its chief sponsor in the Senate, or the "Lame Duck Amendment," was passed through

Congress in 1932 and ratified on 6 February 1933. The terms of office of the President and Vice-President were to begin on 20 January, and of Senators and Representatives on 3 January, on which day Congress should assemble.]

Section 1.

- The terms of the President and Vice-President shall end at noon on the twentieth day of January, and the terms of Senators and Representatives at noon on the third day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2.

The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the third day of January, unless they shall by law appoint a different day.

Section 3.

If, at the time fixed for the beginning of the term of the President, the President-elect shall have died, the Vice-President-elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President-elect shall have failed to qualify, then the Vice-President-elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President-elect nor a Vice-President-elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice-President shall have qualified.

Section 4.

The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for

the case of the death of any of the persons from whom the Senate may choose a Vice-President whenever the right of choice shall have devolved upon them.

Section 5.

Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Section 6.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

25. FRANKLIN ROOSEVELT'S FIRST INAUGURAL ADDRESS

4 MARCH 1933

[Franklin Roosevelt, the Democratic candidate for the Presidency, was elected in November 1932, by 472 electoral votes to 59, with a popular majority of over seven million. During the interval between the election and the inauguration of the new President the economic situation deteriorated further. In February a desperate banking crisis developed, and on the last day of President Hoover's term of office the Governors of New York and Illinois were forced to issue proclamations closing the banks in their States.

President Roosevelt's First Inaugural Address, delivered on 4 March 1933, heralded the great changes, known as the New Deal. He proclaimed his intention to deal with Unemployment, if necessary by means of Public Works organised by the Federal Government; to help Agriculture by raising the value of farm products; to foster relief organisation and industrial planning on a national scale; and to control Banking and Currency. He warned Congress that, if necessary, he would ask for wide powers to be delegated to him to deal with the emergency.

Not the least important part of the address was the

formulation of the "policy of the good neighbour" towards other States. This was to have important results in the development of the relations between the United States and the Latin American Powers.]

President Hoover, Mr Chief Justice, my friends:

This is a day of national consecration, and I am certain that my fellow-Americans expect that on my induction into the Presidency I will address them with a candor and a decision which the present situation of our nation impels.

This is pre-eminently the time to speak the truth, the whole truth, frankly and boldly. Nor need we shrink from honestly facing conditions in our country today. This great nation will endure as it has endured, will revive and will prosper.

So first of all let me assert my firm belief that the only thing we have to fear is fear itself—nameless, unreasoning, unjustified terror which paralyzes needed efforts to convert retreat into advance.

In every dark hour of our national life a leadership of frankness and vigor has met with that understanding and support of the people themselves which is essential to victory. I am convinced that you will again give that support to leadership in these critical days.

In such a spirit on my part and on yours we face our common difficulties. They concern, thank God, only material things. Values have shrunk to fantastic levels; taxes have risen; our ability to pay has fallen, government of all kinds is faced by serious curtailment of income; the means of exchange are frozen in the currents of trade; the withered leaves of industrial enterprise lie on every side; farmers find no markets for their produce; the savings of many years in thousands of families are gone.

More important, a host of unemployed citizens face the grim problem of existence, and an equally great number toil with little return. Only a foolish optimist can deny the dark realities of the moment.

Yet our distress comes from no failure of substance. We are stricken by no plague of locusts. Compared with

the perils which our forefathers conquered because they believed and were not afraid, we have still much to be thankful for. Nature still offers her bounty, and human efforts have multiplied it. Plenty is at our doorstep, but a generous use of it languishes in the very sight of the supply.

Primarily, this is because the rulers of the exchange of mankind's goods have failed through their own stubbornness and their own incompetence, have admitted their failure and abdicated. Practices of the unscrupulous money-changers stand indicted in the court of public opinion, rejected by the hearts and minds of men.

True, they have tried, but their efforts have been cast in the pattern of an outworn tradition. Faced by failure of credit, they have proposed only the lending of more money.

Stripped of the lure of profit by which to induce our people to follow their false leadership, they have resorted to exhortations, pleading tearfully for restored confidence. They know only the rules of a generation of self-seekers.

They have no vision, and when there is no vision the people perish.

The money-changers have fled from their high seats in the temple of our civilization. We may now restore that temple to the ancient truths.

The measure of the restoration lies in the extent to which we apply social values more noble than mere monetary profit.

Happiness lies not in the mere possession of money; it lies in the joy of achievement, in the thrill of creative effort.

The joy and moral stimulation of work no longer must be forgotten in the mad chase of evanescent profits. These dark days will be worth all they cost us if they teach us that our true destiny is not to be ministered unto but to minister to ourselves and to our fellow-men.

Recognition of the falsity of material wealth as the standard of success goes hand in hand with the abandonment of the false belief that public office and high

political position are to be valued only by the standards of pride of place and personal profit; and there must be an end to a conduct in banking and in business which too often has given to a sacred trust the likeness of callous and selfish wrongdoing.

Small wonder that confidence languishes, for it thrives only on honesty, on honor, on the sacredness of obligations, on faithful protection, on unselfish performance. Without them it cannot live.

Restoration calls, however, not for changes in ethics alone. This nation asks for action, and action now.

Our greatest primary task is to put people to work. This is no unsolvable problem if we face it wisely and courageously.

It can be accomplished in part by direct recruiting by the government itself, treating the task as we would treat the emergency of a war, but at the same time, through this employment, accomplishing greatly needed projects to stimulate and reorganize the use of our natural resources.

Hand in hand with this, we must frankly recognize the overbalance of population in our industrial centers and, by engaging on a national scale in the redistribution, endeavor to provide a better use of the land for those best fitted for the land.

The task can be helped by definite efforts to raise the values of agricultural products and with this the power to purchase the output of our cities.

It can be helped by preventing realistically the tragedy of the growing loss, through foreclosure, of our small homes and our farms.

It can be helped by insistence that the Federal, State, and local governments act forthwith on the demand that their cost be drastically reduced.

It can be helped by the unifying of relief activities which to-day are often scattered, uneconomical, and unequal. It can be helped by national planning for and supervision of all forms of transportation and of communications and other utilities which have a definitely public character.

There are many ways in which it can be helped, but it can never be helped merely by talking about it. We must act, and act quickly.

Finally, in our progress toward a resumption of work we require two safeguards against a return of the evils of the old order; there must be a strict supervision of all banking and credits and investments; there must be an end to speculation with other people's money; and there must be provision for an adequate but sound currency.

These are the lines of attack. I shall presently urge upon a new Congress in special session detailed measures for their fulfillment, and I shall seek the immediate assistance of the several States.

Through this program of action we address ourselves to putting our own national house in order and making income balance outgo.

Our international trade relations, though vastly important, are, in point of time and necessity, secondary to the establishment of a sound national economy.

I favor as a practical policy the putting of first things first. I shall spare no effort to restore world trade by international economic readjustment, but the emergency at home cannot wait on that accomplishment.

The basic thought that guides these specific means of national recovery is not narrowly nationalistic.

It is the insistence, as a first consideration, upon the interdependence of the various elements in, and parts of, the United States—a recognition of the old and permanently important manifestation of the American spirit of the pioneer.

It is the way to recovery. It is the immediate way. It is the strongest assurance that the recovery will endure.

In the field of world policy I would dedicate this nation to the policy of the good neighbor—the neighbor who resolutely respects himself and, because he does so, respects the rights of others—the neighbor who respects his obligations and respects the sanctity of his agreements in and with a world of neighbors.

If I read the temper of our people correctly, we now realize as we have never before, our interdependence on each other; that we cannot merely take, but we must give as well; that if we are to go forward we must move as a trained and loyal army willing to sacrifice for the good of a common discipline, because, without such discipline, no progress is made, no leadership becomes effective.

We are, I know, ready and willing to submit our lives and property to such discipline because it makes possible a leadership which aims at a larger good.

This I propose to offer, pledging that the larger purposes will bind upon us all as a sacred obligation with a unity of duty hitherto evoked only in time of armed strife.

With this pledge taken, I assume unhesitatingly the leadership of this great army of our people, dedicated to a disciplined attack upon our common problems.

Action in this image and to this end is feasible under the form of government which we have inherited from our ancestors.

Our Constitution is so simple and practical that it is possible always to meet extraordinary needs by changes in emphasis and arrangement without loss of essential form.

That is why our constitutional system has proved itself the most superbly enduring political mechanism the modern world has produced. It has met every stress of vast expansion of territory, of foreign wars, of bitter internal strife, of world relations.

It is to be hoped that the normal balance of executive and legislative authority may be wholly adequate to meet the unprecedented task before us. But it may be that an unprecedented demand and need for undelayed action may call for temporary departure from that normal balance of public procedure.

I am prepared under my constitutional duty to recommend the measures that a stricken nation in the midst of a stricken world may require.

These measures, or such other measures as the Con-

gress may build out of its experience and wisdom, I shall seek, within my constitutional authority, to bring to speedy adoption.

But in the event that the Congress shall fail to take one of these two courses, and in the event that the national emergency is still critical, I shall not evade the clear course of duty that will then confront me.

I shall ask the Congress for the one remaining instrument to meet the crisis—broad executive power to wage a war against the emergency as great as the power that would be given me if we were in fact invaded by a foreign foe.

For the trust reposed in me I will return the courage and the devotion that befit the time. I can do no less.

We face the arduous days that lie before us in the warm courage of national unity; with the clear consciousness of seeking old and precious moral values; with the clean satisfaction that comes from the stern performance of duty by old and young alike.

We aim at the assurance of a rounded and permanent national life.

We do not distrust the future of essential democracy. The people of the United States have not failed. In their need they have registered a mandate that they want direct, vigorous action.

They have asked for discipline and direction under leadership. They have made me the present instrument of their wishes. In the spirit of the gift I take it.

In this dedication of a nation we humbly ask the blessing of God. May He protect each and every one of us! May He guide me in the days to come!

26. THE AGRICULTURAL ADJUSTMENT ACT

12 MAY 1933

[Even during the days of prosperity American agriculture had suffered from a depression, and its condition in 1933 was desperate. One of the main causes of the distress was the inability of the rest of the world to purchase American farm produce to anything like the same degree as in former years. The Agricultural Adjustment Act, passed on 12 May 1933, was a bold attempt at economic planning, by adjusting agricultural production to the "effective demand" and by raising the level of agricultural prices to a point which would enable farmers to purchase industrial products as they had been able to do during the years 1909-1914. Farmers were to reduce production by destroying part of the 1933 crop and by restricting future crops. In return they were to receive subsidies, obtained from "processing" taxes—that is, taxes paid by the first processor of the particular commodity concerned. The scheme, except in the case of cotton, was voluntary. The Act also gave the President power to carry out a limited policy of inflation by issuing up to three billion dollars of new Treasury notes, by reducing the gold content of the dollar by not more than fifty per cent., and by causing the Federal Reserve Board to purchase up to three billion dollars of additional government securities.

The Act was attacked on various grounds, that it created bureaucratic control of American agriculture, and that it limited production during a time of want instead of creating a greater demand. There is no doubt, however, that the scheme was to a large degree successful in restoring the agricultural community. The plans for the destruction of agricultural products were subjected to bitter attacks, but actually most of the existing surpluses were bought by the Supply Commodity Corporation and used by the Relief Administration.

In January 1936 the Supreme Court declared the processing taxes of the Act invalid (*United States v. Butler et al.*, No. 36). Congress, however, re-enacted many of its provisions by the Soil Conservation Act, the Domestic Allotment Act, and, in 1938, a new Agricultural Adjustment Act. The special processing taxes were abandoned, and the com-

pensation payments were to come out of the general taxes. Instead of the direct abandonment of agricultural acreage, poor lands were to be leased to the Government and then withdrawn from cultivation.]

An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, . . . to provide for the orderly liquidation of joint-stock land banks, and for other purposes.

TITLE I.—AGRICULTURAL ADJUSTMENT.

Declaration of Emergency.

That the present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities, which disparity has largely destroyed the purchasing power of farmers for industrial products, has broken down the orderly exchange of commodities, and has seriously impaired the agricultural assets supporting the national credit structure, it is hereby declared that these conditions in the basic industry of agriculture have affected transactions in agricultural commodities with a national public interest, have burdened and obstructed the normal currents of commerce in such commodities, and render imperative the immediate enactment of Title I of this Act.

Declaration of Policy.

SEC. 2. It is hereby declared to be the policy of Congress—

(1) To establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will re-establish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. The base period in the case of all agricultural commodities except tobacco shall be the pre-war

period, August 1909-July 1914. In the case of tobacco, the base period shall be the post-war period, August 1919-July 1929.

(2) To approach such equality of purchasing power by gradual correction of the present inequalities therein at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets.

(3) To protect the consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities, or products derived therefrom, which is returned to the farmer, above the percentage which was returned to the farmer in the pre-war period, August 1909-July 1914. . . .

SEC. 6. (a) The Secretary of Agriculture is hereby authorized to enter into option contracts with the producers of cotton to sell to any such producer an amount of cotton to be agreed upon not in excess of the amount of reduction in production of cotton by such producer below the amount produced by him in the preceding crop year, in all cases where such producer agrees in writing to reduce the amount of cotton produced by him in 1933, below his production in the previous year, by not less than 30 per centum, without increase in commercial fertilization per acre.

(b) To any such producer so agreeing to reduce production the Secretary of Agriculture shall deliver a nontransferable-option contract agreeing to sell to said producer an amount, equivalent to the amount of his agreed reduction, of the cotton in the possession and control of the Secretary.

(c) The producer is to have the option to buy said cotton at the average price paid by the Secretary for the cotton procured under section 3, and is to have the right at any time up to 1 January 1934 to exercise his option, upon proof that he has complied with his contract and with all the rules and regulations of the Secretary of Agriculture with respect thereto, by taking said cotton upon payment by him of his option price

and all actual carrying charges on such cotton; or the Secretary may sell such cotton for the account of such producer, paying him the excess of the market price at the date of sale over the average price above referred to after deducting all actual and necessary carrying charges: *Provided*, That in no event shall the producer be held responsible or liable for financial loss incurred in the holding of such cotton or on account of the carrying charges therein: *Provided further*, That such agreement to curtail cotton production shall contain a further provision that such cotton producer shall not use the land taken out of cotton production for the production for sale, directly or indirectly, of any other nationally produced agricultural commodity or product. . . .

PART 2.—COMMODITY BENEFITS.

General Powers.

SEC. 8. In order to effectuate the declared policy, the Secretary of Agriculture shall have power—

(1) To provide for reduction in the acreage or reduction in the production for market, or both, of any basic agricultural commodity, through agreements with producers or by other voluntary methods, and to provide for rental or benefit payments in connection therewith or upon that part of the production of any basic agricultural commodity required for domestic consumption, in such amounts as the Secretary deems fair and reasonable, to be paid out of any moneys available for such payments. . . .

(2) To enter into marketing agreements with processors, associations of producers, and others engaged in the handling, in the current of interstate or foreign commerce of any agricultural commodity or project thereof, after due notice and opportunity for hearing to interested parties. The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States, and any such agreement shall be deemed to be lawful. . . .

Processing Tax.

SEC. 9. (a) To obtain revenue for extraordinary expenses incurred by reason of the national economic emergency, there shall be levied processing taxes as hereinafter provided. When the Secretary of Agriculture determines that rental or benefit payments are to be made with respect to any basic agricultural commodity, he shall proclaim such determination, and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation. The processing tax shall be levied, assessed, and collected upon the first domestic processing of the commodity, whether of domestic production or imported, and shall be paid by the processor. . . .

(b) The processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity; except that if the Secretary has reason to believe that the tax at such rate will cause such reduction in the quantity of the commodity or products thereof domestically consumed as to result in the accumulation of surplus stocks of the commodity or products thereof or in the depression of the farm price of the commodity, then he shall cause an appropriate investigation to be made and afford due notice and opportunity for hearing to interested parties. If thereupon the Secretary finds that such result will occur, then the processing tax shall be at such rate as will prevent such accumulation of surplus stocks and depression of the farm price of the commodity. . . .

27. THE TENNESSEE VALLEY ACT

18 MAY 1933

[The Tennessee Valley Act was one of the most important experiments of the New Deal.

In 1918 Government plants and a dam had been built at Muscle Shoals on the Tennessee River for the manufacture of nitrates. After the war there was a fierce controversy over the future of the dam. The Progressives, led by Senator Norris, wished the Government to continue to operate the dam. In 1928 a Bill to this effect passed through Congress and was vetoed by President Coolidge. In 1931 a Bill was passed for the construction of a second dam on the Tennessee River under Government control, but it too was vetoed by President Hoover. In his Veto Message he declared, "I am firmly opposed to the Government entering into any business the major purpose of which is competition with our citizens. . . . I hesitate to contemplate the future of our institutions, of our country, if the pre-occupation of its officials is to be no longer the promotion of justice and equal opportunity, but is to be devoted to barter in the markets. That is not liberalism; it is degeneration."

On 18 May 1933, soon after Mr Roosevelt became President, the Tennessee Valley Act was passed. This set up a Tennessee Valley Authority (T.V.A.), which was given power to construct and operate dams in the valley, to manufacture and sell nitrates and fertilisers, to generate electric power for rural districts, and, in general, to revitalise the surrounding area by reafforestation, by the development of river traffic, and by the improvement of "the economic and social well-being of the people living in the said river basin." The area for this great experiment was well chosen, one of the poorest of American agricultural districts, where the soil had become impoverished through deforestation and overproduction.

The T.V.A. has constructed a series of dams and transmission lines for electric power, which is sold at a low rate. It has withdrawn "marginal" lands from cultivation, resettled farmers, and promoted in various ways the social well-being of the district. By a supplementary Act, passed in 1935, it was empowered to lend money to States and local authorities, to enable them to acquire facilities for distributing electric power.

The experiment has had two main purposes. It has acted as a "yardstick," which has shown up the excessive charges of the private electricity corporations. And it has served as a remarkable experiment in planned regional welfare. It was naturally most unpopular with "big business" and was regarded as an unfair attack on the private concerns. It was claimed also that it was unconstitutional, but the Supreme Court in the case of *Ashwander et al. v. Tennessee Valley Authority*, in 1936, decided that the Government had power to construct dams and sell the surplus current. It is important, however, to notice that the Court did not pronounce on the rights of the Government to do anything more than dispose of "the mechanical energy, incidental to falling water at the dam, converted into electrical energy which is susceptible of transmission.]"

An Act to improve the navigability and to provide for the flood control of the Tennessee River; to provide for reforestation and the proper use of marginal lands in the Tennessee Valley; to provide for the agricultural and industrial development of said valley; to provide for the national defense by the creation of a corporation for the operation of Government properties at and near Muscle Shoals, in the State of Alabama, and for other purposes. . . .

Be it enacted, That for the purpose of maintaining and operating the properties now owned by the United States in the vicinity of Muscle Shoals, Alabama, . . . there is hereby created a body corporate by the name of the "Tennessee Valley Authority." . . .

Sec. 3. . . .

All contracts to which the Corporation is a party and which require the employment of laborers and mechanics in the construction, alteration, maintenance, or repair of buildings, dams, locks, or other projects shall contain a provision that not less than the prevailing rate of wages for work of a similar nature prevailing in the vicinity shall be paid to such laborers or mechanics. . . .

Sec. 4. Except as otherwise specifically provided in this Act, the Corporation—

(f) May purchase or lease and hold such real and personal property as it deems necessary or convenient in the transaction of its business, and may dispose of any such personal property held by it. . . .

(h) Shall have power in the name of the United States of America to exercise the right of eminent domain, and in the purchase of any real estate or the acquisition of real estate by condemnation proceedings, the title to such real estate shall be taken in the name of the United States of America, . . .

(i) Shall have power to acquire real estate for the construction of dams, reservoirs, transmission lines, power houses, and other structures, and navigation projects at any point along the Tennessee River, or any of its tributaries, . . .

(j) Shall have power to construct dams, reservoirs, power houses, power structures, transmission lines, navigation projects, and incidental works in the Tennessee River and its tributaries, and to unite the various power installations into one or more systems by transmission lines.

SEC. 5. The board is hereby authorized— . . .

(b) To arrange with farmers and farm organizations for large-scale practical use of the new forms of fertilizers under conditions permitting an accurate measure of the economic return they produce.

(c) To co-operate with National, State, district, or county experimental stations or demonstration farms, for the use of new forms of fertilizer or fertilizer practices during the initial or experimental period of their introduction.

(d) The board in order to improve and cheapen the production of fertilizer is authorized to manufacture and sell fixed nitrogen, fertilizer, and fertilizer ingredients at Muscle Shoals by the employment of existing facilities, by modernizing existing plants, or by any other process or processes that in its judgment shall appear wise and profitable for the fixation of atmospheric nitrogen or the cheapening of the production of fertilizer.

(e) Under the authority of this Act the board may

make donations or sales of the product of the plant or plants operated by it to be fairly and equitably distributed through the agency of county demonstration agents, agricultural colleges, or otherwise as the board may direct, for experimentation, education, and introduction of the use of such products in co-operation with practical farmers so as to obtain information as to the value, effect, and best methods of their use.

(f) The board is authorized to make alterations, modifications, or improvements in existing plants and facilities, and to construct new plants.

(g) In the event it is not used for the fixation of nitrogen for agricultural purposes or leased, then the board shall maintain in stand-by condition nitrate plant numbered 2, or its equivalent, for the fixation of atmospheric nitrogen, for the production of explosives in the event of war or a national emergency, until the Congress shall by joint resolution release the board from this obligation, and if any part thereof be used by the board for the manufacture of phosphoric acid or potash, the balance of nitrate plant numbered 2 shall be kept in stand-by condition.

(h) To establish, maintain, and operate laboratories and experimental plants, and to undertake experiments for the purpose of enabling the Corporation to furnish nitrogen products for military purposes, and nitrogen and other fertilizer products for agricultural purposes in the most economical manner and at the highest standard of efficiency. . . .

(i) To produce, distribute, and sell electric power, as herein particularly specified.

(m) No products of the Corporation shall be sold for use outside of the United States, its Territories and possessions, except to the United States Government for the use of its Army and Navy, or to its allies in case of war.

Sec. 10. The board is hereby empowered and authorized to sell the surplus power not used in its operations, and for operation of locks and other works generated by it, to States, counties, municipalities,

corporations, partnerships, or individuals, according to the policies hereinafter set forth; and to carry out said authority, the board is authorized to enter into contracts for such sale for a term not exceeding twenty years, and in the sale of such current by the board it shall give preference to States, counties, municipalities, and co-operative organizations of citizens or farmers, not organized or doing business for profit, but primarily for the purpose of supplying electricity to its own citizens or members: . . . In order to promote and encourage the fullest possible use of electric light and power on farms within reasonable distance of any of its transmission lines the board in its discretion shall have power to construct transmission lines to farms and small villages that are not otherwise supplied with electricity at reasonable rates, and to make such rules and regulations governing such sale and distribution of such electric power as in its judgment may be just and equitable: *Provided further*, That the board is hereby authorized and directed to make studies, experiments, and determinations to promote the wider and better use of electric power for agricultural and domestic use, or for small or local industries, and it may co-operate with State governments, or their subdivisions or agencies, with educational or research institutions, and with co-operatives or other organizations, in the application of electric power to the fuller and better balanced development of the resources of the region.

SEC. 11. It is hereby declared to be the policy of the Government, so far as practical, to distribute and sell the surplus power generated at Muscle Shoals equitably among the States, counties, and municipalities within transmission distance. This policy is further declared to be that the projects herein provided for shall be considered primarily as for the benefit of the people of the section as a whole and particularly the domestic and rural consumers to whom the power can economically be made available, and accordingly that sale to and use by industry shall be a secondary purpose, to be utilized principally to secure a sufficiently high load

factor and revenue returns which will permit domestic and rural use at the lowest possible rates and in such manner as to encourage increased domestic and rural use of electricity. It is further hereby declared to be the policy of the Government to utilize the Muscle Shoals properties so far as may be necessary to improve, increase, and cheapen the production of fertilizer and fertilizer ingredients by carrying out the provision of this Act. . . .

SEC. 22. To aid further the proper use, conservation, and development of the natural resources of the Tennessee River drainage basin and of such adjoining territory as may be related to or materially affected by the development consequent to this Act, and to provide for the general welfare of the citizens of said areas, the President is hereby authorized, by such means or methods as he may deem proper within the limits of appropriations made therefor by Congress, to make such surveys of and general plans for said Tennessee basin and adjoining territory as may be useful to the Congress and to the several States in guiding and controlling the extent, sequence, and nature of development that may be equitably and economically advanced through the expenditure of public funds, or through the guidance or control of public authority, all for the general purpose of fostering an orderly and proper physical, economic, and social development of said areas; and the President is further authorized in making said surveys and plans to co-operate with the States affected thereby, or subdivisions or agencies of such States, or with co-operative or other organizations, and to make such studies, experiments, or demonstrations as may be necessary and suitable to that end.

SEC. 23. The President shall, from time to time, as the work provided for in the preceding section progresses, recommend to Congress such legislation as he deems proper to carry out the general purposes stated in said section, and for the especial purpose of bringing about in said Tennessee drainage basin and adjoining territory in conformity with said general purposes (1)

the maximum amount of flood control; (2) the maximum development of said Tennessee River for navigation purposes; (3) the maximum generation of electric power consistent with flood control and navigation; (4) the proper use of marginal lands; (5) the proper method of reforestation of all lands in said drainage basin suitable for reforestation; and (6) the economic and social well-being of the people living in said river basin. . . .

28. THE NATIONAL RECOVERY ACT

16 JUNE 1933

[The National Recovery Act, passed on 16 June 1933, was the most spectacular of the experiments of the New Deal. It was an attempt to rescue the country from the great industrial depression by the elimination of competitive price-cutting, the raising of the national purchasing power, and the planning of industries. The main provisions of the Act may be summarised as follows:

(a) A National Recovery Administration (N.R.A.) was formed under an Administrator, General Johnson. Its purpose was to enact codes of fair competition in the various industries. These codes were drafted by the trade associations, and then referred to Deputy Administrators of the N.R.A. They held public hearings and considered the views of an Industrial Recovery Board, appointed by the Secretary of Commerce, a Labour Advisory Board, appointed by the Secretary of Labour, and a Consumers' Advisory Board, appointed by the N.R.A. The codes were eventually submitted to the President, and when proclaimed by him they had the force of law.

The purpose of the codes was to spread employment, by prohibiting child labour and reducing hours of work; to increase purchasing power by raising minimum wages; and to eliminate price-cutting by agreements within the trades.

On 27 July 1933, the President issued a Re-employment Agreement, known as the "Blanket-code," to serve as a model. This prohibited child labour, limited hours of work to eight a day and forty-eight a week, fixed a minimum wage

of forty cents an hour, and enforced section 7 (a) of the Act dealing with labour relations.

Under the Act monopolies were prohibited, but the anti-trust laws were necessarily suspended.

Between 500 and 600 codes were adopted and some 23,000,000 workers came under their operation.

(b) Under section 7 (a) of the Act, Labour was granted a statutory right to collective bargaining, and a National Labour Board was set up to report on violations of the section and to mediate and arbitrate between employers and employees. (This Board was superseded in 1935 by the National Labour Relations Board. See No. 34.)

(c) A Public Works Administration (P.W.A.) was set up to institute public works to reduce unemployment. These works were mostly undertaken by States and local authorities, the P.W.A. paying or lending money for part of the cost, on condition that the State or the local authority undertook the remaining expenditure. A fund of three billion dollars was instituted for the purpose. The P.W.A. set up a Civil Works Administration which employed about four million men on works of national improvement.

Before long the experiment encountered serious difficulties. It was difficult to enforce the codes, monopolies were, in fact, encouraged, and prices were increased. Above all, the legality of the Act was considered doubtful. In May 1935 the Supreme Court, in the case of *Schechter Poultry Corporation v. United States* (see No. 33), settled the matter by declaring the Act invalid, and the great experiment in code-making was abandoned. But the National Labour Relations Board met with better fortune before the Court, and the P.W.A. continued to function. In 1935 Congress formed the Works Progress Administration (W.P.A.), which took over the task of the P.W.A.]

An Act to encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes.

TITLE I.

INDUSTRIAL RECOVERY.

Declaration of Policy.

SEC. 1. A national emergency productive of widespread unemployment and disorganization of industry,

which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of co-operative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources.

Administrative Agencies.

SEC. 2. (a) To effectuate the policy of this title, the President is hereby authorized to establish such agencies, to accept and utilize such voluntary and uncompensated services, to appoint, without regard to the provisions of the civil service laws, such officers and employees, and to utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees, as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure, and, without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers and employees so appointed.

(b) The President may delegate any of his functions and powers under this title to such officers, agents, and employees as he may designate or appoint, and may establish an industrial planning and research agency to aid in carrying out his functions under this title.

(c) This title shall cease to be in effect and any agencies established hereunder shall cease to exist at the expiration of two years after the date of enactment of this Act, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended.

Codes of Fair Competition.

SEC. 3. (a) Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: *Provided*, That such code or codes shall not permit monopolies or monopolistic practices: *Provided further*, That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared.

(b) After the President shall have approved any such code, the provisions of such code shall be the standards of fair competition for such trade or industry or sub-

division thereof. Any violation of such standards in any transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended; but nothing in this title shall be construed to impair the powers of the Federal Trade Commission under such Act, as amended.

(c) The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of any code of fair competition approved under this title; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations.

(d) Upon his motion, or if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent in any trade or industry or subdivision thereof, and if no code of fair competition therefor has theretofore been approved by the President, the President, after such public notice and hearing as he shall specify, may prescribe and approve a code of fair competition for such trade or industry or subdivision thereof, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of this section. . . .

Agreements and Licences.

SEC. 4. (a) The President is authorized to enter into agreements with, and to approve voluntary agreements between and among, persons engaged in a trade or industry, labor organizations, and trade or industrial organizations, associations, or groups, relating to any trade or industry, if in his judgment such agreements will aid in effectuating the policy of this title with respect to transactions in or affecting interstate or foreign commerce, and will be consistent with the requirements of clause (2) of subsection (a) of section 3 for a code of fair competition.

(b) Whenever the President shall find that destructive wage or price cutting or other activities contrary to the policy of this title are being practised in any trade or industry or any subdivision thereof, and, after such public notice and hearing as he shall specify, shall find it essential to license business enterprises in order to make effective a code of fair competition or an agreement under this title or otherwise to effectuate the policy of this title, and shall publicly so announce, no person shall, after a date fixed in such announcement, engage in or carry on any business, in or affecting interstate or foreign commerce, specified in such announcement, unless he shall have first obtained a license issued pursuant to such regulations as the President shall prescribe. The President may suspend or revoke any such license, after due notice and opportunity for hearing, for violation of the terms or conditions thereof. Any order of the President suspending or revoking any such license shall be final if in accordance with law. . . .

SEC. 5. While this title is in effect . . . and for sixty days thereafter, any code, agreement, or license approved, prescribed, or issued and in effect under this title, and any action complying with the provisions thereof taken during such period, shall be exempt from the provisions of the anti-trust laws of the United States.

Nothing in this Act, and no regulation thereunder, shall prevent an individual from pursuing the vocation of manual labor and selling or trading the products thereof; nor shall anything in this Act, or regulation thereunder, prevent anyone from marketing or trading the produce of his farm.

Limitations upon Application of Title.

SEC. 6. (a) No trade or industrial association or group shall be eligible to receive the benefit of the provisions of this title until it files with the President a statement containing such information relating to the activities of the association or group as the President shall by regulation prescribe. . . .

SEC. 7. (a) Every code of fair competition, agreement, and licence approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

(b) The President shall, so far as practicable, afford every opportunity to employers and employees in any trade or industry or subdivision thereof with respect to which the conditions referred to in clauses (1) and (2) of subsection (a) prevail, to establish by mutual agreement, the standards as to the maximum hours of labor, minimum rates of pay, and such other conditions of employment as may be necessary in such trade or industry or subdivision thereof to effectuate the policy of this title; and the standards established in such agreements, when approved by the President, shall have the same effect as a code of fair competition approved by the President under subsection (a) of section 3.

(c) Where no such mutual agreement has been approved by the President he may investigate the labor practices, policies, wages, hours of labor, and conditions of employment in such trade or industry or subdivision thereof; and upon the basis of such investigations, and after such hearings as the President finds advisable, he is authorized to prescribe a limited code of fair competition fixing such maximum hours of labor, minimum rates of pay, and other conditions of

employment in the trade or industry or subdivision thereof investigated as he finds to be necessary to effectuate the policy of this title, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of section 3. The President may differentiate according to experience and skill of the employees affected and according to the locality of employment; but no attempt shall be made to introduce any classification according to the nature of the work involved which might tend to set a maximum as well as a minimum wage.

(d) As used in this title, the term "person" includes any individual, partnership, association, trust, or corporation. . . .

TITLE II.

PUBLIC WORKS AND CONSTRUCTION PROJECTS.

Federal Emergency Administration of Public Works.

SEC. 201. (a) To effectuate the purposes of this title, the President is hereby authorized to create a Federal Emergency Administration of Public Works, all the powers of which shall be exercised by a Federal Emergency Administrator of Public Works (hereafter referred to as the "Administrator"), and to establish such agencies, to accept and utilize such voluntary and uncompensated services, to appoint, without regard to the civil service laws, such officers and employees, and to utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure, and, without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers and employees so appointed. The President may delegate any of his functions and powers under this title to such officers, agents, and employees as he may designate or appoint.

(b) The Administrator may, without regard to the civil service laws or the Classification Act of 1923, as amended, appoint and fix the compensation of such

experts and such other officers and employers as are necessary to carry out the provisions of this title; and may make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere, for law books and books of reference, and for paper, printing, and binding) as are necessary to carry out the provisions of this title.

(c) All such compensation, expenses, and allowances shall be paid out of funds made available by this Act.

(d) After the expiration of two years after the date of the enactment of this Act, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended, the President shall not make any further loans or grants or enter upon any new construction under this title, and any agencies established hereunder shall cease to exist and any of their remaining functions shall be transferred to such departments of the Government as the President shall designate. . . .

SEC. 202. The Administrator, under the direction of the President, shall prepare a comprehensive program of public works, which shall include among other things the following: (a) Construction, repair, and improvement of public highways and park ways, public buildings, and any publicly owned instrumentalities and facilities; (b) conservation and development of natural resources, including control, utilization, and purification of waters, prevention of soil or coastal erosion, development of water power, transmission of electrical energy, and construction of river and harbour improvements and flood control and also the construction of any river or drainage improvement required to perform or satisfy any obligation incurred by the United States through a treaty with a foreign Government heretofore ratified and to restore or develop for the use of any State or its citizens water taken from or denied to them by performance on the part of the United States of treaty obligations heretofore assumed: *Provided*, That no river or harbor improvements shall

be carried out unless they shall have heretofore or hereafter been adopted by the Congress or are recommended by the Chief of Engineers of the United States Army; (c) any projects of the character heretofore constructed or carried on either directly by public authority or with public aid to serve the interests of the general public; (d) construction, reconstruction, alteration, or repair under public regulation or control of low-cost housing and slum-clearance projects; (e) any project (other than those included in the foregoing classes) of any character heretofore eligible for loans under subsection (a) of section 201 of the Emergency Relief and Construction Act of 1932, as amended, and paragraph (3) of such subsection (a) shall for such purposes be held to include loans for the construction or completion of hospitals the operation of which is partly financed from public funds, and of reservoirs and pumping plants and for the construction of dry docks; and if in the opinion of the President it seems desirable, the construction of naval vessels within the terms and/or limits established by the London Naval Treaty of 1930 and of aircraft required therefor and construction of heavier-than-air aircraft and technical construction for the Army Air Corps and such Army housing projects as the President may approve, and provision of original equipment for the mechanization or motorization of such Army tactical units as he may designate: *Provided, however,* That in the event of an international agreement for the further limitation of armament, to which the United States is signatory, the President is hereby authorized and empowered to suspend, in whole or in part, any such naval or military construction or mechanization and motorization of Army units. . . .

Sec. 203. (a) With a view to increasing employment quickly (while reasonably securing any loans made by the United States) the President is authorized and empowered, through the Administrator or through such other agencies as he may designate or create, (1) to construct, finance, or aid in the construction or financing of any public-works project included in the program

prepared pursuant to section 202; (2) upon such terms as the President shall prescribe, to make grants to States, municipalities, or other public bodies for the construction, repair, or improvement of any such project, but no such grant shall be in excess of 30 per centum of the cost of labor and materials employed upon such project; (3) to acquire by purchase, or by exercise of the power of eminent domain, any real or personal property in connection with the construction of any such project, and to sell any security acquired or any property so constructed or acquired or to lease any such property with or without the privilege of purchase: *Provided*, That all moneys received from any such sale or lease or the repayment of any loan shall be used to retire obligations issued pursuant to section 209 of this Act, in addition to any other moneys required to be used for such purpose; (4) to aid in the financing of such railroad maintenance and equipment as may be approved by the Interstate Commerce Commission as desirable for the improvement of transportation facilities; . . . *Provided*, That in deciding to extend any aid or grant hereunder to any State, county, or municipality the President may consider whether action is in process or in good faith assured therein reasonably designed to bring the ordinary current expenditures thereof within the prudently estimated revenues thereof. . . .

(d) The President, in his discretion, and under such terms as he may prescribe, may extend any of the benefits of this title to any State, county, or municipality notwithstanding any constitutional or legal restriction or limitation on the right or power of such State, county, or municipality to borrow money or incur indebtedness.

SEC. 204. (a) For the purpose of providing for emergency construction of public highways and related projects, the President is authorized to make grants to the highway departments of the several States in an amount not less than \$400,000,000, to be expended by such departments in accordance with the provisions of the Federal Highway Act, approved 9 November 1921, as amended and supplemented. . . .

SEC. 205. (a) Not less than \$50,000,000 of the amount made available by this Act shall be allotted for (A) national forest highways, (B) national forest roads, trails, bridges, and related projects, (C) national park roads and trails in national parks owned or authorized, (D) roads on Indian reservations, and (E) roads through public lands, to be expended in the same manner as provided in paragraph (2) of section 301 of the Emergency Relief and Construction Act of 1932, in the case of appropriations allocated for such purposes, respectively, in such section 301, to remain available until expended. . . .

SEC. 206. All contracts let for construction projects and all loans and grants pursuant to this title shall contain such provisions as are necessary to insure (1) that no convict labor shall be employed on any such project; (2) that (except in executive, administrative, and supervisory positions), so far as practicable and feasible, no individual directly employed on any such project shall be permitted to work more than thirty hours in any one week; (3) that all employees shall be paid just and reasonable wages which shall be compensation sufficient to provide, for the hours of labor as limited, a standard of living in decency and comfort; (4) that in the employment of labor in connection with any such project, preference shall be given, where they are qualified, to *ex-service men with dependents*, and then in the following order: (A) To citizens of the United States and aliens who have declared their intention of becoming citizens, who are bona fide residents of the political subdivision and/or county in which the work is to be performed, and (B) to citizens of the United States and aliens who have declared their intention of becoming citizens, who are bona fide residents of the State, Territory, or district in which the work is to be performed: *Provided*, That these preferences shall apply only where such labor is available and qualified to perform the work to which the employment relates; and (5) that the maximum of human labor shall be used in lieu of machinery wherever practicable and consistent with sound economy and public advantage. . . .

Subsistence Homesteads.

SEC. 208. To provide for aiding the redistribution of the overbalance of population in industrial centres \$25,000,000 is hereby made available to the President, to be used by him through such agencies as he may establish and under such regulations as he may make, for making loans for and otherwise aiding in the purchase of subsistence homesteads. The moneys collected as repayment of said loans shall constitute a revolving fund to be administered as directed by the President for the purposes of this section. . . .

29. THE TWENTY-FIRST AMENDMENT

5 DECEMBER 1933

[The Eighteenth Amendment was a great social experiment and a failure. In 1924 the Democratic party came near to advocating the repeal of the amendment in the presidential election, although its strength lay largely in the dry States of the South. In 1928 it adopted as candidate Al Smith, who was openly opposed to it. President Hoover appointed the Wickersham Commission to examine the question and in 1931 it reported in favour of enforcement. In the presidential election of 1932 the Republicans were in favour of a revision of the amendment, while the Democratic platform said bluntly, "We advocate the repeal of the Eighteenth Amendment." After the victory of the Democrats, Congress on 20 February 1933 passed an amendment repealing the Eighteenth Amendment and this was ratified on 5 December 1933.

It should be noted that the Twenty-first Amendment did not restore the conditions which existed before the Webb-Kenyon Act of 1913, which prohibited the transportation of liquor to any State where its sale was illegal.]

Section 1.

The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2.

The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by convention in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

30. THE JOHNSON ACT

13 APRIL 1934

[Great Britain paid her instalment on the American debt in full in December 1932, but made only token payments in June and December 1933. Most of America's other debtors followed suit. The default roused great indignation in the United States and, on 13 April 1934, Congress passed the Johnson Act, which prohibited the raising of loans in the United States or the lending of money by the United States Government to any State in default on its American debts. Since the passing of the Act, Finland, alone of America's creditors, has not defaulted wholly. The British Government, when doing so in June 1934, declared its readiness to resume payment after the question of a revision of the debt agreement had been discussed.]

An Act to prohibit financial transactions with any foreign government in default on its obligations to the United States.

Be it enacted, That hereafter it shall be unlawful within the United States or any place subject to the jurisdiction of the United States for any person to purchase or sell the bonds, securities, or other obligations of

any foreign government or political subdivision thereof or any organization or association acting for or on behalf of a foreign government or political subdivision thereof, issued after a passage of this Act, or to make any loan to such foreign government, political subdivision, organization, or association, except a renewal or adjustment of existing indebtedness while such government, political subdivision, organization, or association is in default in the payment of its obligations, or any part thereof, to the Government of the United States. Any person violating the provisions of this Act shall upon conviction thereof be fined not more than \$10,000 or imprisoned for not more than five years, or both.

SEC. 2. As used in this Act the term "person" includes individual, partnership, corporation, or association other than a public corporation created by or pursuant to special authorization of Congress, or a corporation in which the Government of the United States has or exercises a controlling interest through stock ownership or otherwise.

31. ABROGATION OF THE PLATT AMENDMENT

29 MAY 1934

[In his first Inaugural Address on 4 March 1933 President Roosevelt had announced that he "would dedicate this nation to the policy of the good neighbour." The most conspicuous examples of this policy were to be seen in the new relations which grew up between the United States and the Latin-American Republics. On 29 May 1934 a treaty was signed between the United States and Cuba, abrogating the Treaty of 1903, based on the so-called Platt Amendment, which had given the United States the right to intervene in Cuban affairs. This positive proof of goodwill did much to enable President Roosevelt to build up American solidarity in the face of future threats to the peace and security of the Western Hemisphere.]

128 *Abrogation of the Platt Amendment, 29 May 1934*

The United States of America and the Republic of Cuba, being animated by the desire to fortify the relations of friendship between the two countries, and to modify, with this purpose, the relations established between them by the Treaty of Relations signed at Havana, 22 May 1903, have appointed, with this intention, as their plenipotentiaries: . . .

Who, after having communicated to each other their full powers, which were found to be in good and due form, have agreed upon the following articles:

ART. I. The Treaty of Relations which was concluded between the two contracting parties on 22 May 1903 shall cease to be in force, and is abrogated, from the date on which the present treaty goes into effect.

ART. II. All the acts effected in Cuba by the United States of America during its military occupation of the island, up to 20 May 1902, the date on which the Republic of Cuba was established, have been ratified and held as valid; and all rights legally acquired by virtue of those acts shall be maintained and protected.

ART. III. Until the two contracting parties agree to the modification or abrogation of the stipulations of the agreement in regard to the lease to the United States of America of lands in Cuba for coaling and naval stations signed by the President of the Republic of Cuba on 16 February 1903, and by the President of the United States of America on the 23rd day of the same month and year, the stipulations of that agreement with regard to the naval station of Guantanamo shall continue in effect. The supplementary agreement in regard to naval or coaling stations signed between the two governments on 2 July 1903, shall continue in effect in the same form and on the same conditions with respect to the naval station at Guantanamo. So long as the United States of America shall not abandon the said naval station of Guantanamo or the two governments shall not agree to a modification of its present limits, the station shall continue to have the territorial area that it now has, with the limits that it has on the date of the signature of the present treaty.

ART. IV. If at any time in the future a situation should arise that appears to point to an outbreak of contagious disease in the territory of either of the contracting parties, either of the two governments shall, for its own protection, and without its act being considered unfriendly, exercise freely and at its discretion the right to suspend communications between those of its ports that it may designate and all or part of the territory of the other party, and for the period that it may consider to be advisable.

ART. V. The present Treaty shall be ratified by the contracting parties in accordance with their respective Constitutional methods; and shall go into effect on the date of the exchange of their ratifications, which shall take place in the city of Washington as soon as possible,

32. THE TRADE AGREEMENTS ACT

12 JUNE 1934

[The Democratic Party Platform of 1932 had condemned the Hawley-Smoot Tariff of 1929, the highest tariff of American history. Instead of scaling down the import duties, President Roosevelt obtained from Congress the Trade Agreements Act of 12 June 1934, under which he was authorised to form trade agreements with foreign countries, and, if desirable, to lower tariff rates by as much as 50 per cent. by proclamation. This policy, which was sponsored particularly by Mr Cordell Hull, the Secretary of State, was a remarkable extension of the President's power. Limited to three years, it was renewed in 1937 and again in 1940. Under this Act agreements, entailing substantial reductions in Tariffs, have been made with over twenty countries, including Canada in 1935 and Great Britain in 1938.

(The section of the Act giving these powers to the President was in the form of an amendment to the Tariff Act of 1930, which allowed him to modify specific rates of duties under certain conditions).]

Be it enacted . . . That the Tariff Act of 1930 is amended by adding at the end of the Title III the following :

SEC. 350. (a) For the purpose of expanding foreign markets for the products of the United States (as a means of assisting in the present emergency in restoring the American standard of living, in overcoming domestic unemployment and the present economic depression, in increasing the purchasing power of the American public, and in establishing and maintaining a better relationship among various branches of American agriculture, industry, mining, and commerce) by regulating the admission of foreign goods into the United States in accordance with the characteristics and needs of various branches of American production so that foreign markets will be made available to those branches of American production which require and are capable of developing such outlets by affording corresponding market opportunities for foreign products in the United States, the President, whenever he finds as a fact that any existing duties or other import restrictions of the United States or any foreign country are unduly burdening and restricting the foreign trade of the United States and that the purpose above declared will be promoted by the means hereinafter specified, is authorized from time to time—

(1) To enter into foreign trade agreements with foreign governments or instrumentalities thereof; and

(2) To proclaim such modifications of existing duties and other import restrictions, or such additional import restrictions, or such continuance, and for such minimum periods, of existing customs or excise treatment of any article covered by foreign trade agreements, as are required or appropriate to carry out any foreign trade agreement that the President has entered into hereunder. No proclamation shall be made increasing or decreasing by more than 50 per centum any existing rate of duty or transferring any article between the dutiable and free lists. The proclaimed duties and other import restrictions shall apply to articles the growth, produce, or manufacture of all foreign countries, whether imported

directly, or indirectly: *Provided*, That the President may suspend the application to articles the growth, produce, or manufacture of any country because of its discriminatory treatment of American commerce or because of other acts or policies which in his opinion tend to defeat the purposes set forth in this section; and the proclaimed duties and other import restrictions shall be in effect from and after such time as is specified in the proclamation. The President may at any time terminate any such proclamation in whole or in part.

33. SCHECHTER POULTRY CORPORATION v. UNITED STATES, 1935

[By its decision in this case, one of the most important in the history of the United States, the Supreme Court destroyed at a blow the whole structure of the National Recovery Act.

The Schechter Poultry Corporation conducted wholesale poultry slaughterhouse markets in Brooklyn. Except that they occasionally bought poultry from commission men in Philadelphia, the Corporation did not buy poultry from outside the State of New York, nor did they sell it to retailers outside the State. Under the National Recovery Act, section 3, a "Live Poultry Code" was promulgated on 13 April 1934, which laid down a number of regulations for the trade, affecting incidentally the hours of work, the rate of minimum wages, and the practices of the trade. The Corporation was convicted on a number of charges, including those of violating the provisions fixing maximum hours of work and minimum wages, and of the requirement of "straight killing" and other trade practices; of avoiding the provisions for inspection; and of selling to unlicensed dealers.

The Court first declared that extraordinary conditions which existed at the time an Act was passed cannot themselves create or enlarge constitutional power, and also that the purpose of the Act was not simply to stimulate voluntary effort, but that it involved the coercive exercise of the law-making power.

The Act was held to be invalid for two reasons. First, Congress cannot delegate to the President legislative power. The Act set up new and controlling prohibitions through codes of laws, and on the President was conferred an unfettered discretion to make whatever laws he thought might be needed to rehabilitate trade and industry. This code-making power was an unconstitutional delegation of legislative power.

Second, the Act was an unconstitutional extrusion of the powers of Congress under the Commerce clause of the Constitution. Neither the slaughtering nor the sales of poultry by the defendants were transactions in interstate commerce. Nor could it be claimed that the transactions of the defendants came within the scope of legislation by Congress because they "affected" interstate commerce. Where the effect of intrastate transactions upon interstate commerce was only indirect, such transactions remained within the domain of the State power.

At the close of his judgment, Chief Justice Hughes laid down a series of propositions which explain very clearly the constitutional position of the Supreme Court in political questions. It was not the province of the Court to consider the *economic advantages or disadvantages of a particular system*, but only whether the Federal Constitution provided for it. In dealing with an economic crisis, "the recuperative efforts of the Federal Government must be made in a manner consistent with the authority granted by the Constitution."]

HUGHES, C. J.: Petitioners were convicted in the District Court of the United States for the Eastern District of New York on eighteen counts of an indictment charging violations of what is known as the "Live Poultry Code," and on an additional count for conspiracy to commit such violations. By demurrer to the indictment and appropriate motions on the trial, the defendants contended (1) that the Code had been adopted pursuant to an unconstitutional delegation by Congress of legislative power; (2) that it attempted to regulate intrastate transactions which lay outside the authority of Congress; and (3) that in certain provisions it was repugnant to the due process clause of the Fifth Amendment. . . .

New York City is the largest live-poultry market in the United States. Ninety-six per cent. of the live poultry there marketed comes from other States. Three-fourths of this amount arrives by rail and is consigned to commission men or receivers. Most of these freight shipments (about 75 per cent.) come in at the Manhattan Terminal of the New York Central Railroad, and the remainder at one of the four terminals in New Jersey serving New York City. The commission men transact by far the greater part of the business on a commission basis, representing the shippers as agents, and remitting to them the proceeds of sale, less commissions, freight, and handling charges. Otherwise, they buy for their own account. They sell to slaughterhouse operators, who are also called market men.

The defendants are slaughterhouse operators of the latter class. A. I. A. Schechter Poultry Corporation and Schechter Live Poultry Market are corporations conducting wholesale poultry slaughterhouse markets in Brooklyn, New York City. Defendants ordinarily purchase their live poultry from commission men at the West Washington Market in New York City or at the railroad terminals serving the City, but occasionally they purchase from commission men in Philadelphia. They buy the poultry for slaughter and resale. After the poultry is trucked in their slaughterhouse markets in Brooklyn, it is there sold, usually within twenty-four hours, to retail poultry dealers and butchers who sell directly to consumers. The poultry purchased from defendants is immediately slaughtered, prior to delivery, by shochtim in defendants' employ. Defendants do not sell poultry in interstate commerce.

The "Live Poultry Code" was promulgated under section 3 of the National Industrial Recovery Act. That section authorises the President to approve "codes of fair competition." Such a code may be approved for a trade or industry, upon application by one or more trade or industrial associations or groups, if the President finds (1) that such associations or groups "impose no inequitable restrictions on admission to membership

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therein and are truly representative," and (2) that such codes are not designed "to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy" of Title I of the Act. Such codes "shall not permit monopolies or monopolistic practices." As a condition of his approval, the President may "impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code as the President in his discretion deems necessary to effectuate the policy herein declared." Where such a code has not been approved, the President may prescribe one, either on his own motion or on complaint. Violation of any provision of a code (so approved or prescribed) "in any transaction in or affecting interstate or foreign commerce" is made a misdemeanor punishable by a fine of not more than \$500 for each offense, and each day the violation continues is to be deemed a separate offense.

The "Live Poultry Code" was approved by the President on 13 April 1934. Its divisions indicate its nature and scope. The Code has eight articles entitled (1) purposes, (2) definitions, (3) hours, (4) wages, (5) general labor provisions, (6) administration, (7) trade practice provisions, and (8) general.

The declared purpose is "To effect the policies of Title I of the National Industrial Recovery Act." The Code is established as "a code for fair competition for the live poultry industry of the metropolitan area in and about the City of New York." That area is described as embracing the five boroughs of New York City, the counties of Rockland, Westchester, Nassau, and Suffolk in the State of New York, the counties of Hudson and Bergen in the State of New Jersey, and the county of Fairfield in the State of Connecticut.

The "industry" is defined as including "every person engaged in the business of selling, purchasing for resale

transporting, or handling and/or slaughtering live poultry, from the time such poultry comes into the New York metropolitan area to the time it is first sold in slaughtered form," and such "related branches" as may from time to time be included by amendment. Employers are styled "members of the industry," and the term employee is defined to embrace "any and all persons engaged in the industry, however compensated," except "members."

The Code fixes the number of hours for work-days. It provides that no employee, with certain exceptions, shall be permitted to work in excess of forty (40) hours in any one week, and that no employee, save as stated, "shall be paid in any pay period less than at the rate of fifty (50) cents per hour." The article containing "general labor provisions" prohibits the employment of any person under sixteen years of age, and declares that employees shall have the right of "collective bargaining," and freedom of choice with respect to labor organizations, in the terms of section 7 (a) of the Act. *The minimum number of employees, who shall be employed by slaughterhouse operators, is fixed, the number being graduated according to the average volume of weekly sales. . . .*

The seventh article, containing "trade practice provisions," prohibits various practices which are said to constitute "unfair methods of competition." . . .

Of the eighteen counts of the indictment upon which the defendants were convicted, aside from the count for conspiracy, two counts charged violation of the minimum wage and maximum hour provisions of the Code, and ten counts were for violation of the requirement (found in the "trade practice provisions") of "straight killing." The charges in the ten counts, respectively, were that the defendants in selling to retail dealers and butchers had permitted "selections of individual chickens taken from particular coops and half coops."

Of the other six counts, one charged the sale to a butcher of an unfit chicken; two counts charged the making of sales without having the poultry inspected or

approved in accordance with regulations or ordinances of the City of New York; two counts charged the making of false reports or the failure to make reports relating to the range of daily prices and volume of sales for certain periods; and the remaining count was for sales to slaughterers or dealers who were without licenses required by the ordinances and regulations of the City of New York.

First. Two preliminary points are stressed by the Government with respect to the appropriate approach to the important questions presented. We are told that the provision of the statute authorizing the adoption of codes must be viewed in the light of the grave national crisis with which Congress was confronted. Undoubtedly, the conditions to which power is addressed are always to be considered when the exercise of power is challenged. Extraordinary conditions may call for extraordinary remedies. But the argument necessarily stops short of an attempt to justify action which lies outside the sphere of constitutional authority. Extraordinary conditions do not create or enlarge constitutional power. The Constitution established a national government with powers deemed to be adequate, as they have proved to be both in war and peace, but these powers of the national government are limited by the constitutional grants. Those who act under these grants are not at liberty to transcend the imposed limits because they believe that more or different power is necessary. Such assertions of extra-constitutional authority were anticipated and precluded by the explicit terms of the Tenth Amendment,—“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

The further point is urged that the national crisis demanded a broad and intensive co-operative effort by those engaged in trade and industry, and that this necessary co-operation was sought to be fostered by permitting them to initiate the adoption of codes. But the statutory plan is not simply one for voluntary effort.

It does not seek merely to endow voluntary trade or industrial associations or groups with privileges or immunities. It involves the coercive exercise of the law-making powers. The codes of fair competition, which the statute attempts to authorize, are codes of laws. If valid, they place all persons within their reach under the obligation of positive law, binding equally those who assent and those who do not assent. Violations of the provisions of the codes are punishable as crimes.

Second. The question of the delegation of legislative power. We recently had occasion to review the pertinent decisions and the general principles which govern the determination of this question (*Panama Refining Co. v. Ryan*). The Constitution provides that "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives" (Art. I, sec. 1). And the Congress is authorized "to make all laws which shall be necessary and proper for carrying into execution" its general powers (Art. I, sec. 8, par. 18). The Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested. We have repeatedly recognized the necessity of adapting legislation to complex conditions involving a host of details with which the national legislature cannot deal directly. We pointed out in the *Panama Co.* case that the Constitution has never been regarded as denying to Congress the necessary resources of flexibility and practicality, which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply. But we said that the constant recognition of the necessity and validity of such provisions, and the wide range of administrative authority which has been developed by means of them, cannot be allowed to obscure the limitations of the authority to delegate, if our constitutional system is to be maintained. . . .

For a statement of the authorized objectives and content of the "codes of fair competition" we are referred repeatedly to the "Declaration of Policy" in section one of Title I of the Recovery Act. Thus, the approval of a code by the President is conditioned on his finding that it "will tend to effectuate the policy of this title." Sec. 3 (a). The President is authorized to impose such conditions "for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code as the President in his discretion deems necessary to effectuate the policy herein declared." *Id.* The "policy herein declared" is manifestly that set forth in section one. That declaration embraces a broad range of objectives. Among them we find the elimination of "unfair competitive practices." . . .

We think the conclusion is inescapable that the authority sought to be conferred by section 3 was not merely to deal with "unfair competitive practices" which offend against existing law, and could be the subject of judicial condemnation without further legislation, or to create administrative machinery for the application of established principles of law to particular instances of violation. Rather, the purpose is clearly disclosed to authorize new and controlling prohibitions through codes of laws which would embrace what the formulators would propose, and what the President would approve, or prescribe, as wise and beneficent measures for the government of trades and industries in order to bring about their rehabilitation, correction and development, according to the general declaration of policy in section one. Codes of laws of this sort are styled "codes of fair competition."

We find no real controversy upon this point and we must determine the validity of the Code in question in this aspect. . . .

The Government urges that the codes will "consist of rules of competition deemed fair for each industry by representative members of that industry—by the

persons most vitally concerned and most familiar with its problems." Instances are cited in which Congress has availed itself of such assistance; as, for example, in the exercise of its authority over the public domain, with respect to the recognition of local customs or rules of miners as to mining claims, or, in matters of a more or less technical nature, as in designating the standard height of drawbars. But would it be seriously contended that Congress could delegate its legislative authority to trade or industrial associations or groups so as to empower them to enact the laws they deem to be wise and beneficent for the rehabilitation and expansion of their trade or industries? Could trade or industrial associations or groups be constituted legislative bodies for that purpose because such associations or groups are familiar with the problems of their enterprises? And, could an effort of that sort be made valid by such a preface of generalities as to permissible aims as we find in section 1 of Title I? The answer is obvious. Such a delegation of legislative power is unknown to our law and is utterly inconsistent with the constitutional prerogatives and duties of Congress.

The question, then, turns upon the authority which section 3 of the Recovery Act vests in the President to approve or prescribe. If the codes have standing as penal statutes, this must be due to the effect of the executive action. But Congress cannot delegate legislative power to the President to exercise an unfettered discretion to make whatever laws he thinks may be needed or advisable for the rehabilitation and expansion of trade or industry.

Accordingly we turn to the Recovery Act to ascertain what limits have been set to the exercise of the President's discretion. *First*, the President, as a condition of approval, is required to find that the trade or industrial associations or groups which propose a code, "impose no inequitable restrictions on admission to membership" and are "truly representative." That condition, however, relates only to the status of the initiators of the new laws and not to the permissible

scope of such laws. *Second*, the President is required to find that the code is not "designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them." And, to this is added a proviso that the code "shall not permit monopolies or monopolistic practices." But these restrictions leave virtually untouched the field of policy envisaged by section one, and, in that wide field of legislative possibilities, the proponents of a code, refraining from monopolistic designs, may roam at will and the President may approve or disapprove their proposals as he may see fit. . . .

Nor is the breadth of the President's discretion left to the necessary implications of this limited requirement as to his findings. As already noted, the President in approving a code may impose his own conditions, adding to or taking from what is proposed, as "in his discretion" he thinks necessary "to effectuate the policy" declared by the Act. Of course, he has no less liberty when he prescribes a code of his own motion or on complaint, and he is free to prescribe one if a code has not been approved. The Act provides for the creation by the President of administrative agencies to assist him, but the action or reports of such agencies, or of his other assistants—their recommendations and findings in relation to the making of codes—have no sanction beyond the will of the President, who may accept, modify or reject them as he pleases. Such recommendations or findings in no way limit the authority which section 3 undertakes to vest in the President with no other conditions than those there specified. And this authority relates to a host of different trades and industries, thus extending the President's discretion to all the varieties of laws which he may deem to be beneficial in dealing with the vast array of commercial and industrial activities throughout the country.

Such a sweeping delegation of legislative power finds no support in the decisions upon which the Government especially relies. . . .

To summarize and conclude upon this point: Section 3

of the Recovery Act is without precedent. It supplies no standards for any trade, industry, or activity. It does not undertake to prescribe rules of conduct to be applied to particular states of fact determined by appropriate administrative procedure. Instead of prescribing rules of conduct, it authorizes the making of codes to prescribe them. For that legislative undertaking, section 3 sets up no standards, aside from the statement of the general aims of rehabilitation, correction, and expansion described in section one. In view of the scope of that broad declaration, and of the nature of the few restrictions that are imposed, the discretion of the President in approving or prescribing codes, and thus enacting laws for the government of trade and industry throughout the country, is virtually unfettered. We think that the code-making authority thus conferred is an unconstitutional delegation of legislative power.

Second. The question of the application of the provisions of the Live Poultry Code to intrastate transactions. . . . This aspect of the case presents the question whether the particular provisions of the Live Poultry Code, which the defendants were convicted for violating and for having conspired to violate, were within the regulating power of Congress.

These provisions relate to the hours and wages of those employed by defendants in their slaughterhouses in Brooklyn and to the sales there made to retail dealers and butchers.

(1) Were these transactions "*in*" interstate commerce? Much is made of the fact that almost all the poultry coming to New York is sent there from other States. But the code provisions, as here applied, do not concern the transportation of the poultry from other States to New York, or the transactions of the commission men or others to whom it is consigned, or the sales made by such consignees to defendants. When defendants had made their purchases, whether at the West Washington Market in New York City or at the railroad terminals serving the City, or elsewhere, the poultry were trucked to their slaughterhouses in Brooklyn

for local disposition. The interstate transactions in relation to that poultry then ended. Defendants held the poultry at their slaughterhouse markets for slaughter and local sale to retail dealers and butchers who in turn sold directly to consumers. Neither the slaughtering nor the sales by defendants were transactions in interstate commerce.

The undisputed facts thus afford no warrant for the argument that the poultry handled by defendants at their slaughterhouse markets was in a "current" or "flow" of interstate commerce and was thus subject to congressional regulation. The mere fact that there may be a constant flow of commodities into a State does not mean that the flow continues after the property has arrived and has become commingled with the mass of property within the State and is there held solely for local disposition and use. So far as the poultry here in question is concerned, the flow in interstate commerce had ceased. The poultry had come to a permanent rest within the State. It was not held, used, or sold by defendants in relation to any further transactions in interstate commerce and was not destined for transportation to other states. Hence, decisions which deal with a stream of interstate commerce—where goods come to rest within a State temporarily and are later to go forward in interstate commerce—and with the regulations of transactions involved in that practical continuity of movement, are not applicable here.

(2) Did the defendants' transactions directly "affect" interstate commerce so as to be subject to federal regulation? The power of Congress extends not only to the regulation of transactions which are part of interstate commerce, but to the protection of that commerce from injury. . . .

In determining how far the federal government may go in controlling intrastate transactions upon the ground that they "affect" interstate commerce, there is a necessary and well-established distinction between direct and indirect effects. The precise line can be drawn only as individual cases arise, but the distinction

is clear in principle. Direct effects are illustrated by the railroad cases we have cited, as *e.g.*, the effect of failure to use prescribed safety appliances on railroads which are the highways of both interstate and intrastate commerce, injury to an employee engaged in interstate transportation by the negligence of an employee engaged in an intrastate movement, the fixing of rates for intrastate transportation which unjustly discriminate against interstate commerce. But where the effect of intrastate transactions upon interstate commerce is merely indirect, such transactions remain within the domain of State power. If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the federal authority would embrace practically all the activities of the people and the authority of the State over its domestic concerns would exist only by sufferance of the Federal Government. Indeed, on such a theory, even the development of the State's commercial facilities would be subject to federal control. . . .

The distinction between direct and indirect effects has been clearly recognized in the application of the Anti-Trust Act. Where a combination or conspiracy is formed, with the intent to restrain interstate commerce or to monopolize any part of it, the violation of the statute is clear. But where that intent is absent, and the objectives are limited to intrastate activities, the fact that there may be an indirect effect upon interstate commerce does not subject the parties to the federal statute, notwithstanding its broad provisions. . . .

While these decisions related to the application of the federal statute, and not to its constitutional validity, the distinction between direct and indirect effects of intrastate transactions upon interstate commerce must be recognized as a fundamental one, essential to the maintenance of our constitutional system. Otherwise, as we have said, there would be virtually no limit to the federal power and for all practical purposes we should have a completely centralized government. We must consider the provisions here in question in the light of this distinction.

The question of chief importance relates to the provisions of the Code as to the hours and wages of those employed in defendants' slaughterhouse markets. It is plain that these requirements are imposed in order to govern the details of defendants' management of their local business. The persons employed in slaughtering and selling in local trade are not employed in interstate commerce. Their hours and wages have no direct relation to interstate commerce. The question of how many hours these employers should work and what they should be paid differs in no essential respect from similar questions in other local businesses which handle commodities brought into a State and there dealt in as a part of its internal commerce. This appears from an examination of the considerations urged by the Government with respect to conditions in the poultry trade. Thus, the Government argues that hours and wages affect prices; that slaughterhouse men sell at a small margin above operating costs; that labor represents 50 to 60 per cent. of these costs; that a slaughterhouse operator paying lower wages or reducing his cost by exacting long hours of work, translates his saving into lower prices; that this results in demands for a cheaper grade of goods; and that the cutting of prices brings about demoralization of the price structure. Similar conditions may be adduced in relation to other businesses. The argument of the Government proves too much. If the Federal Government may determine the wages and hours of employees in the internal commerce of a State, because of their relation to cost and prices and their indirect effect upon interstate commerce, it would seem that a similar control might be exerted over other elements of cost, also affecting prices, such as the number of employees, rents, advertising, methods of doing business, etc. All the processes of production and distribution that enter into cost could likewise be controlled. If the cost of doing an intrastate business is in itself the permitted object of federal control, the extent of the regulation of cost would be a question of discretion and not of power.

The Government also makes the point that efforts to enact state legislation establishing high labor standards have been impeded by the belief that unless similar action is taken generally, commerce will be diverted from the States adopting such standards, and that this fear of diversion has led to demands for federal legislation on the subject of wages and hours. The apparent implication is that the federal authority under the commerce clause should be deemed to extend to the establishment of rules to govern wages and hours in intrastate trade and industry generally throughout the country, thus overriding the authority of the States to deal with domestic problems arising from labor conditions in their internal commerce.

It is not the province of the Court to consider the economic advantages or disadvantages of such a centralized system. It is sufficient to say that the Federal Constitution does not provide for it. Our growth and development have called for wide use of the commerce power of the federal government in its control over the expanded activities of interstate commerce, and in protecting that commerce from burdens, interferences, and conspiracies to restrain and monopolize it. But the authority of the Federal Government may not be pushed to such an extreme as to destroy the distinction, which the commerce clause itself establishes, between commerce "among the several States" and the internal concerns of a State. The same answer must be made to the contention that is based upon the serious economic situation which led to the passage of the Recovery Act—the fall in prices, the decline in wages and employment, and the curtailment of the market for commodities. Stress is laid upon the great importance of maintaining wage distributions which would provide the necessary stimulus in starting "the cumulative forces making for expanding commercial activity." Without in any way disparaging this motive, it is enough to say that the recuperative efforts of the Federal Government must be made in a manner consistent with the authority granted by the Constitution.

We are of the opinion that the attempt through the provisions of the Code to fix the hours and wages of employees of defendants in their intrastate business was not a valid exercise of federal power.

The other violations for which defendants were convicted related to the making of local sales. Ten counts, for violation of the provision as to "straight killing," were for permitting customers to make "selections of individual chickens taken from particular coops and half coops." Whether or not this practice is good or bad for the local trade, its effect, if any, upon interstate commerce was only indirect. The same may be said of violations of the Code by intrastate transactions consisting of the sale "of an unfit chicken" and of sales which were not in accord with the ordinances of the city of New York. The requirement of reports as to prices and volumes of defendants' sales was incident to the effort to control their intrastate business.

In view of these conclusions, we find it unnecessary to discuss other questions which have been raised as to the validity of certain provisions of the Code under the due-process clause of the fifth amendment.

On both the grounds we have discussed, the attempted delegation of legislative power, and the attempted regulation of intrastate transactions which affect interstate commerce only indirectly, we hold the code provisions here in question to be invalid and that the judgment of conviction must be reversed.

34. THE WAGNER-CONNERY (NATIONAL LABOR RELATIONS) ACT

5 JULY 1935

[Congress on 5 July 1935 passed the National Labor Relations Act to fill the gap in labour legislation caused by the decision of the Supreme Court in the *Schechter Poultry Corporation* case (see No. 33). A body, the National Labor

Relations Board (N.L.R.B.), was set up to issue "cease and desist" orders against firms engaged in interstate commerce which employed unfair labour practices, such as refusing to adopt the principle of collective bargaining, setting up of labour unions confined to the members of one firm ("company-unions"), or discriminating between union and non-union workers. The workers' representatives were to belong exclusively to the "appropriate unit" for the purpose, and the Board was to decide which this might be.

The Act faced many difficulties. It was naturally unpopular with the employers. It also often had to face strong opposition from the workers, as the struggle between the two great labour unions, the American Federation of Labor and the Congress of Industrial Organizations, made the task of deciding which was "the appropriate unit" in any dispute peculiarly difficult. Further, in consequence of the decision of the Supreme Court in the *Schechter Poultry Corporation* case, the constitutional validity of the Act was very doubtful; employers refused to accept the findings of the Board, and the inferior courts upheld their action. However, in 1937, the Supreme Court upheld the Act in the case of the *National Labor Relations Board v. Jones and Laughlin Steel Corporation* (see No. 41), and the hands of the Board were immediately strengthened. The Board was undoubtedly successful in bringing about a peaceful settlement of many disputes, but its most important effect was greatly to further the development of the union movement in the United States.]

An Act to diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes.

Be it enacted,

Findings and Policy.

SEC. 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of

commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association, substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

Sec. 2. When used in this Act—

(1) The term "person" includes one or more in-

dividuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse. . . .

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States. . . .

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce. . . .

(9) The term "labor dispute" includes any controversy concerning terms, tenure, or conditions of

employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee. . . .

National Labor Relations Board.

SEC. 3. (a) There is hereby created a board, to be known as the "National Labor Relations Board," which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause. . . .

Rights of Employees.

SEC. 7. Employees shall have the right of self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be

prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act, as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

Representatives and Elections.

Sec. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the

unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board, shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

Prevention of Unfair Labor Practices.

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a com-

plaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing, or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent or agency, or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken, the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken, the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. . . .

(e) The Board shall have power to petition any circuit court of appeals of the United States, or if all

the circuit courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. . . . The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification. . . .

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business. . . .

Investigatory Powers.

SEC. 11. For the purpose of all hearings and investigations, . . .

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. . . .

Limitations.

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike. . . .

35. THE SOCIAL SECURITY ACT

14 AUGUST 1935

[For a long time the United States lagged far behind the other industrialised countries in its system of social security. In 1909 Montana first passed legislation for workmen's compensation, and some progress was made in this direction, but in 1933 only twenty-five States had passed laws instituting old age pensions, and in 1935 only ten had attempted to form schemes for unemployment insurance.

The Social Security Act, passed on 14 August 1935, was a bold plan to enable the Federal Government to enter this field, previously entirely within the domain of the States. In the main the policy was for a Social Security Board to make grants from federal funds to States whose schemes it considered satisfactory. Those States whose systems of social insurance were approved would receive fifteen dollars a month for each person. In and after 1942 the Board would

provide funds for annuities, varying from ten to eighty-five dollars a month, to all workers who had contributed to an insurance scheme and who retired from employment at sixty-five, without regard to means. Twenty-five million dollars a year were passed to the States in aid of dependent children, and the same sum for maternity and child welfare, the blind, crippled children, public health services, and vocational rehabilitation. The States were to grant an equal amount to that granted by the Federal Government.

There were to be federal "payroll" taxes, amounting to 4 per cent. in 1937, and rising gradually to 9 per cent. in 1947. This entails the principle that benefit and contribution shall vary according to the wages of the worker. Of the funds collected in this way 90 per cent. was to be returned for unemployment insurance to those States which had a system considered satisfactory by the Board. The Board is accumulating a large balance as payments into the Social Security Fund begun in 1937, and payments out will be much smaller for many years.

The Act was a great extension of the authority of the Federal Government, and its constitutional validity was considered very doubtful. In 1937, however, it was upheld in a number of cases, which constituted a most important victory for the principles of the New Deal. (See No. 43.)]

An Act to provide for the general welfare by establishing a system of Federal old-age benefits, and by enabling the several States to make more adequate provision for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment compensation laws; to establish a Social Security Board; to raise revenue; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I.

GRANTS TO STATES FOR OLD AGE ASSISTANCE.

Appropriation.

SEC. 1. For the purpose of enabling each State to furnish financial assistance, as far as practicable under

the conditions in such State, to aged needy individuals, there is hereby authorized to be appropriated for the fiscal year ending 30 June 1936 the sum of \$49,750,000, and there is hereby authorized to be appropriated for each fiscal year thereafter a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Social Security Board established by Title VII, State plans for old-age assistance.

State Old-Age Assistance Plans.

SEC. 2. (a) A State plan for old-age assistance must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide for granting to any individual, whose claim for old-age assistance is denied, an opportunity for a fair hearing before such State agency; (5) provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be necessary for the efficient operation of the plan; (6) provide that the State agency will make such reports, in such form and containing such information, as the Board may from time to time require, and comply with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports; and (7) provide that, if the State or any of its political subdivisions collects from the estate of any recipient of old-age assistance any amount with respect to old-age assistance furnished him under the plan, one-half of the net amount so collected shall be promptly paid to the United States. Any payment so made shall be deposited in the Treasury to the credit of the appropriation for the purposes of this title.

(b) The Board shall approve any plan which fulfils the conditions specified in subsection (a), except that it shall not approve any plan which imposes, as a condition of eligibility for old-age assistance under the plan—

(1) An age requirement of more than sixty-five years, except that the plan may impose, effective until 1 January 1940, an age requirement of as much as seventy years; or

(2) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for old-age assistance and has resided therein continuously for one year immediately preceding the application; or

(3) Any citizenship requirement which excludes any citizen of the United States.

Payment to States.

SEC. 3. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for old-age assistance, for each quarter, beginning with the quarter commencing 1 July 1935, (1) an amount, which shall be used exclusively as old-age assistance, equal to one-half of the total of the sums expended during such quarter as old-age assistance under the State plan with respect to each individual who at the time of such expenditure is sixty-five years of age or older and is not an inmate of a public institution, not counting so much of such expenditure with respect to any individual for any month as exceeds \$30, and (2) 5 per centum of such amount, which shall be used for paying the costs of administering the State plan or for old-age assistance, or both, and for no other purpose: *Provided*, That the State plan, in order to be approved by the Board, need not provide for financial participation before 1 July 1937 by the State, in the case of any State which the Board, upon application by the State and after reasonable notice and opportunity for

hearing to the State, finds is prevented by its constitution from providing such financial participation.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Board shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of clause (1) of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such clause, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than one-half of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of aged individuals in the State, and (C) such other investigation as the Board may find necessary. . . .

TITLE II.

FEDERAL OLD-AGE BENEFITS.

Old-Age Reserve Account.

SEC. 201. (a) There is hereby created an account in the Treasury of the United States to be known as the "Old-Age Reserve Account." . . .

Old-Age Benefit Payments.

SEC. 202. (a) Every qualified individual shall be entitled to receive, with respect to the period beginning on the date he attains the age of sixty-five, or on 1 January 1942, whichever is the later, and ending on the date of his death, an old-age benefit (payable as nearly as practicable in equal monthly instalments) as follows:

(1) If the total wages determined by the Board to have been paid to him, with respect to employment after 31 December 1936, and before he attained

the age of sixty-five, were not more than \$3000, the old-age benefit shall be at a monthly rate of one-half of 1 per centum of such total wages;

(2) If such total wages were more than \$3000, the old-age benefit shall be at a monthly rate equal to the sum of the following:

(A) One-half of 1 per centum of \$3000; plus

(B) One-twelfth of 1 per centum of the amount by which such total wages exceeded \$3000 and did not exceed \$45,000; plus

(C) One twenty-fourth of 1 per centum of the amount by which such total wages exceeded \$45,000.

(b) In no case shall the monthly rate computed under subsection (a) exceed \$85. . . .

Payments upon Death.

SEC. 203. (a) If any individual dies before attaining the age of sixty-five, there shall be paid to his estate an amount equal to $3\frac{1}{2}$ per centum of the total wages determined by the Board to have been paid to him, with respect to employment after 31 December 1936. . . .

Payments to Aged Individuals not Qualified for Benefits.

SEC. 204. (a) There shall be paid in a lump sum to any individual who, upon attaining the age of sixty-five, is not a qualified individual, an amount equal to $3\frac{1}{2}$ per centum of the total wages determined by the Board to have been paid to him, with respect to employment after 31 December 1936, and before he attained the age of sixty-five.

(b) After any individual becomes entitled to any payment under subsection (a), no other payment shall be made under this title in any manner measured by wages paid to him, except that any part of any payment under subsection (a) which is not paid to him before his death shall be paid to his estate. . . .

SEC. 210. . . .

(b) The term "employment" means any service,

of whatever nature, performed within the United States by an employee for his employer, except—

- (1) Agricultural labor;
- (2) Domestic service in a private home;
- (3) Casual labor not in the course of the employer's trade or business;
- (4) Service performed as an officer or member of the crew of a vessel documented under the laws of the United States or of any foreign country;
- (5) Service performed in the employ of the United States Government or of an instrumentality of the United States;
- (6) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;
- (7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual. . . .

TITLE III.

GRANTS TO STATES FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION.

Appropriation.

SEC. 301. For the purpose of assisting the States in the administration of their unemployment compensation laws, there is hereby authorized to be appropriated, for the fiscal year ending 30 June 1936, the sum of \$4,000,000, and for each fiscal year thereafter the sum of \$49,000,000, to be used as hereinafter provided.

Payments to States.

SEC. 302. (a) The Board shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation

law approved by the Board under Title IX, such amounts as the Board determines to be necessary for the proper administration of such law during the fiscal year in which such payment is to be made. The Board's determination shall be based on (1) the population of the State; (2) an estimate of the number of persons covered by the State law and of the cost of proper administration of such law; and (3) such other factors as the Board finds relevant. The Board shall not certify for payment under this section in any fiscal year a total amount in excess of the amount appropriated therefor for such fiscal year. . . .

Provisions of State Laws.

SRC. 303. (a) The Board shall make no certification for payment to any State unless it finds that the law of such State, approved by the Board under Title IX, includes provisions for—

(1) Such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be reasonably calculated to insure full payment of unemployment compensation when due; and

(2) Payment of unemployment compensation solely through public employment offices in the State or such other agencies as the Board may approve; and

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied; and

(4) The payment of all money received in the unemployment fund of such State, immediately upon such receipt, to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904; and

(5) Expenditure of all money requisitioned by the State agency from the Unemployment Trust Fund, in the payment of unemployment compensation, exclusive of expenses of administration; and

(6) The making of such reports, in such form and containing such information, as the Board may from time to time require, and compliance with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports; and

(7) Making available upon request to any agency of the United States, charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of such recipient's rights to further compensation under such law.

(b) Whenever the Board, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—

(1) a denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto under such law; or

(2) a failure to comply substantially with any provision specified in subsection *a*);

the Board shall notify such State agency that further payments will not be made to the State until the Board is satisfied that there is no longer any such denial or failure to comply. Until it is so satisfied it shall make no further certification to the Secretary of the Treasury with respect to such State. . . .

TITLE IV.

GRANTS TO STATES FOR AID TO DEPENDENT CHILDREN.

Appropriation.

SEC. 401. For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy dependent children, there is hereby authorized to be appropriated

for the fiscal year ending 30 June 1936 the sum of \$24,750,000, and there is hereby authorized to be appropriated for each fiscal year thereafter a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Board, State plans for aid to dependent children. . . .

Payment to States.

SEC. 403. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to dependent children, for each quarter, beginning with the quarter commencing 1 July 1935, an amount, which shall be used exclusively for carrying out the State plan, equal to one-third of the total of the sums expended during such quarter under such plan, not counting so much of such expenditure with respect to any dependent child for any month as exceeds \$18, or if there is more than one dependent child in the same home, as exceeds \$18 for any month with respect to one such dependent child and \$12 for such month with respect to each of the other dependent children. . . .

Definitions.

SEC. 406. When used in this title—

(a) The term "dependent child" means a child under the age of sixteen who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, or aunt, in a place of residence maintained by one or more of such relatives as his or their own home. . . .

TITLE V.

GRANTS TO STATES FOR MATERNAL AND CHILD
WELFARE.

Part 1.—*Maternal and Child Health Services.*

Appropriation.

SEC. 501. For the purpose of enabling each State to extend and improve, as far as practicable under the conditions in such State, services for promoting the health of mothers and children, especially in rural areas and in areas suffering from severe economic distress, there is hereby authorized to be appropriated for each fiscal year, beginning with the fiscal year ending 30 June 1936, the sum of \$3,800,000. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Chief of the Children's Bureau, State plans for such services.

Allotments to States.

SEC. 502. (a) Out of the sums appropriated pursuant to section 501 for each fiscal year the Secretary of Labor shall allot to each State \$20,000, and such part of \$1,800,000 as he finds that the number of live births in such State bore to the total number of live births in the United States, in the latest calendar year for which the Bureau of the Census has available statistics.

(b) Out of the sums appropriated pursuant to section 501 for each fiscal year the Secretary of Labor shall allot to the States \$980,000 (in addition to the allotments made under subsection (a)), according to the financial need for each State for assistance in carrying out its State plan, as determined by him after taking into consideration the number of live births in such State. . . .

Approval of State Plans.

SEC. 503. (a) A State plan for maternal and child-health services must (1) provide for financial participation by the State; (2) provide for the administration of

the plan by the State health agency or the supervision of the administration of the plan by the State health agency; (3) provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are necessary for the efficient operation of the plan; (4) provide that the State health agency will make such reports, in such form and containing such information as the Secretary of Labor may from time to time require, and comply with such provisions as he may from time to time find necessary to assure the correctness and verification of such reports; (5) provide for the extension and improvement of local maternal and child-health services administered by local child-health units; (6) provide for co-operation with medical, nursing, and welfare groups and organizations; and (7) provide for the development of demonstration services in needy areas and among groups in special need. . . .

Part 3.—*Child-Welfare Services.*

SEC. 521. (a) For the purpose of enabling the United States, through the Children's Bureau, to co-operate with State public-welfare agencies in establishing, extending, and strengthening, especially in predominantly rural areas, public-welfare services (hereinafter in this section referred to as "child-welfare services") for the protection and care of homeless, dependent, and neglected children, and children in danger of becoming delinquent, there is hereby authorized to be appropriated for each fiscal year, beginning with the fiscal year ending 30 June 1936, the sum of \$1,500,000. Such amount shall be allotted by the Secretary of Labor for use by co-operating State public-welfare agencies on the basis of plans developed jointly by the State agency and the Children's Bureau, to each State, \$10,000, and the remainder to each State on the basis of such plans, not to exceed such part of the remainder as the rural population of such State bears to the total rural population of the United States. The amount so allotted

shall be expended for payment of part of the cost of district, county, or other local child-welfare services in areas predominantly rural, and for developing State services for the encouragement and assistance of adequate methods of community child-welfare organization in areas predominantly rural and other areas of special need. . . .

TITLE VI.

PUBLIC HEALTH WORK.

Appropriation.

SEC. 601. For the purpose of assisting States, counties, health districts, and other political subdivisions of the States in establishing and maintaining adequate public-health services, including the training of personnel for State and local health work, there is hereby authorized to be appropriated for each fiscal year, beginning with the fiscal year ending 30 June 1936, the sum of \$8,000,000 to be used as hereinafter provided.

State and Local Public Health Services.

SEC. 602. (a) The Surgeon General of the Public Health Service, with the approval of the Secretary of the Treasury, shall, at the beginning of each fiscal year, allot to the States the total of (1) the amount appropriated for such year pursuant to section 601; and (2) the amounts of the allotments under this section for the preceding fiscal year remaining unpaid to the States at the end of such fiscal year. The amounts of such allotments shall be determined on the basis of (1) the population; (2) the special health problems; and (3) the financial needs, of the respective States. Upon making such allotments the Surgeon General of the Public Health Service shall certify the amounts thereof to the Secretary of the Treasury.

(b) The amount of an allotment to any State under subsection (a) for any fiscal year, remaining unpaid at the end of such fiscal year, shall be available for allotment to States under subsection (a) for the succeeding

fiscal year, in addition to the amount appropriated for such year.

(c) Prior to the beginning of each quarter of the fiscal year, the Surgeon General of the Public Health Service shall, with the approval of the Secretary of the Treasury, determine in accordance with rules and regulations previously prescribed by such Surgeon General after consultation with a conference of the State and Territorial health authorities, the amount to be paid to each State for such quarter from the allotment to such State, and shall certify the amount so determined to the Secretary of the Treasury. Upon receipt of such certification, the Secretary of the Treasury shall, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay in accordance with such certification.

(d) The moneys so paid to any State shall be expended solely in carrying out the purposes specified in section 601, and in accordance with plans presented by the health authority of such State and approved by the Surgeon General of the Public Health Service.

Investigations.

SEC. 603. (a) There is hereby authorized to be appropriated for each fiscal year, beginning with the fiscal year ending 30 June 1936, the sum of \$2,000,000 for expenditure by the Public Health Service for investigation of disease and problems of sanitation. . . .

TITLE VII.

SOCIAL SECURITY BOARD.

Establishment.

SEC. 701. There is hereby established a Social Security Board to be composed of three members to be appointed by the President, by and with the advice and consent of the Senate. During his term of membership on the Board, no member shall engage in any other

business, vocation, or employment. Not more than two of the members of the Board shall be members of the same political party. Each member shall receive a salary at the rate of \$10,000 a year and shall hold office for a term of six years, . . .

Duties of Social Security Board.

SEC. 702. The Board shall perform the duties imposed upon it by this Act and shall also have the duty of studying and making recommendations as to the most effective methods of providing economic security through social insurance, and as to legislation and matters of administrative policy concerning old-age pensions, unemployment compensation, accident compensation, and related subjects. . . .

TITLE VIII.

TAXES WITH RESPECT TO EMPLOYMENT.

Income Tax on Employees.

SEC. 801. In addition to other taxes, there shall be levied, collected, and paid upon the income of every individual a tax equal to the following percentages of the wages (as defined in section 811) received by him after 31 December 1936, with respect to employment (as defined in section 811) after such date:

(1) With respect to employment during the calendar years 1937, 1938, and 1939, the rate shall be 1 per centum.

(2) With respect to employment during the calendar years 1940, 1941, and 1942, the rate shall be $1\frac{1}{2}$ per centum.

(3) With respect to employment during the calendar years 1943, 1944, and 1945, the rate shall be 2 per centum.

(4) With respect to employment during the calendar years 1946, 1947, and 1948, the rate shall be $2\frac{1}{2}$ per centum.

(5) With respect to employment after 31 December 1948, the rate shall be 3 per centum.

Deduction of Tax from Wages.

SEC. 802. (a) The tax imposed by section 801 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid . . .

Excise Tax on Employers.

SEC. 804. In addition to other taxes, every employer shall pay an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 811) paid by him after 31 December 1936, with respect to employment (as defined in section 811) after such date:

(1) With respect to employment during the calendar years 1937, 1938, and 1939, the rate shall be 1 per centum.

(2) With respect to employment during the calendar years 1940, 1941, and 1942, the rate shall be $1\frac{1}{2}$ per centum.

(3) With respect to employment during the calendar years 1943, 1944, and 1945, the rate shall be 2 per centum.

(4) With respect to employment during the calendar years 1946, 1947, and 1948, the rate shall be $2\frac{1}{2}$ per centum.

(5) With respect to employment after 31 December 1948, the rate shall be 3 per centum. . . .

TITLE IX.

TAX ON EMPLOYERS OF EIGHT OR MORE.

Imposition of Tax.

SEC. 901. On and after 1 January 1936 every employer shall pay for each calendar year an excise tax, with respect to having individuals in his employ, equal to the following percentages of the total wages payable

by him with respect to employment during such calendar year:

(1) With respect to employment during the calendar year 1936 the rate shall be 1 per centum.

(2) With respect to employment during the calendar year 1937 the rate shall be 2 per centum.

(3) With respect to employment after 31 December 1937, the rate shall be 3 per centum. . . .

Certification of State Laws.

SEC. 903. (a) The Social Security Board shall approve any State law submitted to it, within thirty days of such submission, which it finds provides that

(1) All compensation is to be paid through public employment offices in the State or such other agencies as the Board may approve;

(2) No compensation shall be payable with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required;

(3) All money received in the unemployment fund shall immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund. . . .

(5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout, or other labour dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favourable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any *bona fide* labor organization.

Unemployment Trust Fund.

SEC. 904. (a) There is hereby established in the Treasury of the United States a trust fund to be known as the "Unemployment Trust Fund, . . ."

(b) It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. . . .

Interstate Commerce.

SEC. 906. No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate commerce, or that the State law does not distinguish between employees engaged in interstate commerce and those engaged in intrastate commerce.

36. SENATOR BORAH'S BROADCAST ADDRESS

22 FEBRUARY 1936

[On 22 February 1936, on the occasion of Washington's birthday, Senator Borah broadcast an address to the American nation which can be taken as a classic statement of the point of view of the Isolationists. During 1935 the dispute between Italy and Abyssinia had led to the imposition of Sanctions on the former State by the League of Nations, and the failure of this policy was ascribed by many to the refusal of the United States to co-operate. The rising danger of war in Europe led to a growing fear on the part of many Americans that they would be forced to participate.]

. . . I will be pardoned, I trust, if I place first and foremost in this discussion to-night Washington's foreign policy. I do so, first, because it was the strong conviction of Washington, Jefferson, Hamilton, Madison, and all of their compeers that this policy was the keystone to the arch of popular government, that without such a policy popular government might, and likely would, ultimately fail. Upon many questions the builders entertained diverse views. But upon this question of our foreign policy they were undivided, and upon this question they were all zealots. Upon many questions Washington sought counsel and advice, and was sometimes troubled to arrive at a conclusion. But upon this question his opinion was firm and unwavering from the beginning and his vision clear and constant. It was his opinion, and the opinion of all his advisers, and never in all those arduous years under the shadow of doubt that aloofness from the political affairs and controversies of the Old World was as much a part in our adventure in free government, as necessary to our independence and to the success of our scheme of orderly liberty, as the Federal Constitution itself. . . .

Finally, I give precedence to Washington's foreign policy to-night because the question of whether we shall preserve and successfully maintain it or whether we shall become a part of the political life of Europe was never more acute than at this time. Our long-established and cherished policy is being challenged under a new and far more attractive guise. It is now urged that this policy stands in the way of world peace and of our doing our part in the cause of humanity. It cannot be denied that the American people are deeply interested in the cause of peace and would reflect seriously over maintaining a policy which embarrasses the cause of peace. It cannot be denied that we are interested as a people, as we have always been, in the advancement of human justice and human happiness, not only among our own, but among all peoples. When it is said, therefore, that a great national policy impedes or embarrasses the cause of peace and weighs against the

betterment of world conditions, such a charge constitutes an attack that cannot be ignored.

The policy established by the great leader whose name we honor, it is claimed, no longer harmonizes with the grand scheme to bring peace to all nations. Like our Constitution and our free institutions, in the minds of some, this policy, too, has become antiquated and out of date.

It was Washington's belief that the greatest service we could render to the cause of peace or to human happiness was to demonstrate the success of popular government, to establish under the auspices of liberty the rule of the people, thereby "recommending it to the applause, the affection, and adoption of every nation which is yet a stranger to it." It was his further belief that any policy which militated against the success of such an enterprise was to be rejected, regardless of what its merit otherwise might be.

Let us look into current events that we may test the morality and the wisdom of our policy of neutrality in the light of these events—let us see whether in the light of these events it can be seriously charged that we are serving the cause of war rather than that of peace. In considering current events we do not mention the names of nations either to criticize or to defend their course, and we do not examine their policies to offer suggestions to them or to criticize them, but simply to determine their effect upon our own nation. We have a right, it seems to me, to inquire, when we are charged with pursuing a selfish and unmoral course, to look beneath the charges and see whether it is devotion to world peace or the advancement of purely national interests which inspires the charge. There are a few people in this country, and, of course, many other countries, who are fond of instituting comparisons between the policies of other countries and our own, all with the purpose of disparaging the policy of the United States. We need not shrink from such comparisons. The fact that the only nations since the World War which have invaded the territory of other

nations are those under a special covenant not to do so justifies us in dealing with facts rather than with professions. In determining the justice and wisdom of our own course, the safety and security of our own people, the wisdom and morality of our own foreign policy, we must be governed by what nations do, and not by what they profess to be willing to do. "There can be no greater error than to expect, or calculate, upon real favours from nation to nation. It is an illusion which experience must cure, which a just pride ought to discard." What are the facts? What is it we are asked to do that we may be counted among those who love peace? . . .

[There follows a comparison between Great Britain's readiness to urge all nations to participate in Sanctions against Italy in 1935 and her refusal to commit herself against Japan after that country's aggression in Manchuria in 1931.]

In the light of this record, and in the light of the movement of all nations, the charge that the United States, in adopting a policy of neutrality, is standing in the way of world peace or occupies the position of an immoral and selfish nation is the most transparent piece of propaganda that has afflicted this country since the World War.

And let us bear in mind that, while as to some things which tend to interfere with our policy of neutrality, the nation may deal with them through legislation or through administration. But against the selfish forces of propaganda parading under the livery of all-wise or humanitarian garbs only the vigilance and poise of the people can protect us. Just what part propaganda had in drawing us into the World War we cannot with accuracy say. But we know it was very great. Propaganda is never absent in any great international emergency; indeed, in any emergency, foreign or domestic. It is a profession. It is more than a profession; it is also a racket.

Something could be said, and perhaps should be said, about the plan of rendering judgment against a

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nation supposed to be an aggressor. Edmund Burke declared he knew of no way by which to draw an indictment against an entire people. A way has now been found, not only to indict but to try and convict an entire people. This procedure does not concern us except in so far as it may be used as an inducement in a new guise to our mixing in the political affairs of Europe. When we see the plan applied to one nation and not to another and realize that in both instances the controlling forces were political, that national interests and national ambitions directed the course in each instance, we must readily perceive that an aggressor is not one who has broken a covenant or attacked a small nation, but one which has transgressed the zone of interests of some other nation. The judgment of such a tribunal when thus secured is either a futility or justification for war, as we now well know. Whatever may be the machinery or whatever may be the plans of European nations to deal with each other, it is not for us to inquire as to their wisdom, or unwisdom, but it is perfectly evident that the forces which dominate are the same under whatever name they may be called into action.

While I have no purpose to discuss the subject in detail to-night, I could not subscribe to the theory that collective action against the supposed aggressor means peace. It inevitably means war unless the nation is too weak to resist, and then it means oppression. It is confusion worse confounded to talk about employing force against a sovereign State as a State employs it against a citizen or subject. When the framers of the Federal Constitution were discussing the question of employing force against a sovereign State in the execution of a judgment of the Federal court, it was Hamilton, as I remember, who declared it was madness.

The United States, in pursuing a course of neutrality, not only consults and serves the interests of her own people, but under no reasonable rule of international conduct can be regarded as doing injustice to other people. To declare that such a course is immoral is

unworthy of its authors. We should be neutral. We should remain free from European controversies. We have our own problems. They are distinct from the problems abroad. A democracy must remain at home in all matters which affect the nature of her institutions. They are of a nature to call for the undivided energy and devotion of the entire nation. We do not want the racial antipathies or national antagonisms of the Old World transplanted to this continent, as they will be should we become a part of European politics. The people of this country are overwhelmingly for a policy of neutrality. And we cannot be neutral and unneutral at the same time. . . .

37. THE UNITED STATES *v.* BUTLER *et al.*

1936

[The decision in this case, which invalidated the Agricultural Adjustment Act of 1933, was one of the most severe blows to the New Deal.

The respondents, as receivers of the Hooac Mills Corporation, refused to meet a claim for processing and floor taxes under sections 9 and 16 of the Act. Section 9 established the raising of processing taxes as a means of providing rental or benefit payments for a basis agricultural commodity, in this case cotton. The tax was to be at a rate equal to the difference between the current average farm price of the commodity and the fair exchange value, which was to be calculated at a price that would give the commodity the same purchasing power with respect to articles that farmers buy as it had during the base period. In the case of cotton, that base period was fixed as that between August 1909 and July 1914.

First, it was claimed by the Government that the Act was merely a revenue measure, levying an excise on the processing of cotton, the proceeds of which might be used by the federal treasury for any purpose. The Court held that a "tax" meant an exaction for the support of the Government, not the expropriation of money from one

group for the benefit of another; that the Act was one regulating agricultural production and the tax a mere incidence in such regulation. However, if the levy were an expedient regulation under one of the powers granted to Congress by the Constitution, it could not be held invalid.

It was claimed then that under Article I, section 8, of the Constitution, which granted Congress its various powers, there was authority for the contemplated expenditure of the funds raised by the tax. The third clause of this section gave Congress power "to regulate Commerce among the several States." The Court held this clause to be irrelevant. The first clause gave Congress power "to lay and collect Taxes, Duties, Imports and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States." It was claimed that the phrase, "general welfare," should be liberally construed to cover anything conducive to national welfare; that it was for Congress to decide what would promote such welfare and not for the Courts to review its decision; and that the tax in question was for the general welfare of the United States.

The Court agreed that this phrase had been variously interpreted and that the question had never been authoritatively settled, but it held that it was not necessary to determine whether an appropriation in aid of agriculture was covered by it. It held that the Act invaded the reserved rights of the States. It was a statutory plan to regulate and control agricultural production, a matter beyond the powers delegated to the Federal Government, and the tax, the appropriation of the funds raised, and the direction of their disbursement were, therefore, but means to an unconstitutional end. By the Tenth Amendment the powers not expressly granted to the Federal Government were reserved to the States or to the people, and no powers to regulate agricultural production were given.

It was claimed finally that the plan was constitutionally sound because the end was to be accomplished by voluntary co-operation. The Court held that the regulation was not in fact voluntary, but that, even if it were, it would be none the less unconstitutional, being a scheme for purchasing with federal funds submission to federal regulation of a subject reserved to the States.

There was a great difference in tone between the judgment of Justice Roberts in this case and that of Chief Justice Hughes in the *Schechter Poultry Corporation* case which had invalidated the National Recovery Act (No. 33). Chief

Justice Hughes had expounded clearly and with becoming firmness the constitutional principles which had led the Court to declare against that Act, but he had been careful to avoid any expression of views on its political advantages or disadvantages. Justice Roberts dwelt with considerable vehemence on the dangers inherent in legislation of the type of the Agricultural Adjustments Act, even stating that the interpretation of the Constitution advanced by the Government would lead to the subversion of that instrument, the obliteration of the independence of the individual States, and the conversion of the United States into a central government exercising uncontrolled police power in every State of the Union. Further, while in the case of the *Schechter Poultry Corporation* the Court gave a unanimous verdict, in that of the *Hosac Mills* three Justices dissented from the opinion of the majority. Justice Stone, in his dissenting opinion, criticised severely the attitude adopted by Justice Roberts. The criticism directed against the Supreme Court, as a result of this and other similar decisions, led directly to the attempt made by President Roosevelt to reform the Federal Judiciary (No. 39).]

ROBERTS, J. In this case we must determine whether certain provisions of the Agricultural Adjustment Act, 1933, conflict with the Federal Constitution. . . .

First. At the outset the United States contends that the respondents have no standing to question the validity of the tax. The position is that the Act is merely a revenue measure levying an excise upon the activity of processing cotton—a proper subject for the imposition of such a tax—the proceeds of which go into the federal treasury and thus become available for appropriation for any purpose. It is said that what the respondents are endeavoring to do is to challenge the intended use of the money pursuant to Congressional appropriation when, by confession, that money will have become the property of the Government, and the taxpayer will no longer have any interest in it. . . .

The tax can only be sustained by ignoring the avowed purpose and operation of the Act, and holding it a measure merely laying on excise upon processors to raise revenue for the support of the Government. Beyond

cavil the sole object of the legislation is to restore the purchasing power of agricultural products to a parity with that prevailing in an earlier day; to take money from the processor and bestow it upon farmers who will reduce their acreage for the accomplishment of the proposed end, and, meanwhile, to aid these farmers during the period required to bring the prices of their crops to the desired level.

The tax plays an indispensable part in the plan of regulation. As stated by the Agricultural Adjustment Administrator, it is "the heart of the law"; a means of "accomplishing one or both of two things intended to help farmers attain parity prices and purchasing power." . . .

It is inaccurate and misleading to speak of the exaction from processors prescribed by the challenged Act as a tax, or to say that as a tax it is subject to no infirmity. A tax, in the general understanding of the term, and as used in the Constitution, signifies an exaction for the support of the Government. The word has never been thought to connote the expropriation of money from one group for the benefit of another. We may concede that the latter sort of imposition is constitutional when imposed to effectuate regulation of a matter in which both groups are interested and in respect of which there is a power of legislative regulation. But manifestly no justification for it can be found unless as an integral part of such regulation. The exaction cannot be wrested out of its setting, denominated an excise for raising revenue, and legalised by ignoring its purpose as a mere instrumentality for bringing about a desired end. To do this would be to shut our eyes to what all others than we can see and understand.

We conclude that the Act is one regulating agricultural production, that the tax is a mere incident of such regulation, and that the respondents have standing to challenge the legality of the exaction.

It does not follow that as the Act is not an exertion of the taxing power and the exaction not a true tax, the statute is void or the exaction uncollectible. For,

to paraphrase what was said in *The Head Money* cases, if this is an expedient regulation by Congress, of a subject within one of its granted powers, "and the end to be attained is one falling within that power, the Act is not void, because, within a loose and more extended sense than was used in the Constitution," the exaction is called a tax.

Second. The Government asserts that even if the respondents may question the propriety of the appropriation embodied in the statute their attack must fail because Article I, section 8, of the Constitution authorizes the contemplated expenditure of the funds raised by the tax. This contention presents the great and the controlling question in the case. We approach its decision with a sense of our grave responsibility to render judgment in accordance with the principles established for the governance of all three branches of the Government.

There should be no misunderstanding as to the function of this court in such a case. It is sometimes said that the court assumes a power to overrule or control the action of the people's representatives. This is a misconception. The Constitution is the supreme law of the land ordained and established by the people. All legislation must conform to the principles it lays down. When an Act of Congress is appropriately challenged in the courts as not conforming to the constitutional mandate, the judicial branch of the Government has only one duty—to lay the article of the Constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former. All the court does, or can do, is to announce its considered judgment upon the question. The only power it has, if such it may be called, is the power of judgment. This court neither approves nor condemns any legislative policy. Its delicate and difficult office is to ascertain and declare whether the legislation is in accordance with, or in contravention of, the provisions of the Constitution; and, having done that, its duty ends.

The question is not what power the Federal Government ought to have, but what powers in fact have been given by the people. It hardly seems necessary to reiterate that ours is a dual form of government; that in every State there are two Governments—the State and the United States. Each State has all governmental powers save such as the people, by their Constitution, have conferred upon the United States, denied to the States, or reserved to themselves. The federal union is a government of delegated powers. It has only such as are expressly conferred upon it and such as are reasonably to be implied from those granted. In this respect we differ radically from nations where all legislative power, without restriction or limitation, is vested in a parliament or other legislative body subject to no restrictions except the discretion of its members.

Article I, section 8, of the Constitution vests sundry powers in the Congress. But two of its clauses have any bearing upon the validity of the statute under review.

The third clause endows the Congress with power "to regulate Commerce . . . among the several States." Despite a reference in its first section to a burden upon, and an obstruction of the normal currents of commerce, the Act under review does not purport to regulate transactions in interstate or foreign commerce. Its stated purpose is the control of agricultural production, a purely local activity in an effort to raise the prices paid the farmer. Indeed, the Government does not attempt to uphold the validity of the Act on the basis of the commerce clause, which, for the purpose of the present case, may be put aside as irrelevant.

The clause thought to authorize the legislation—the first—confers upon the Congress power "to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States. . . ." It is not contended that this provision grants power to regulate agricultural production upon the theory that such legislation would promote the general welfare. The

Government concedes that the phrase "to provide for the general welfare" qualifies the power "to lay and collect taxes." The view that the clause grants power to provide for the general welfare, independently of the taxing power, has never been authoritatively accepted. . . . The true construction undoubtedly is that the only thing granted is the power to tax for the purpose of providing funds for payment of the nation's debts and making provision for the general welfare.

Nevertheless the Government asserts that warrant is found in this clause for the adoption of the Agricultural Adjustment Act. The argument is that Congress may appropriate and authorize the spending of moneys for the "general welfare"; that the phrase should be liberally construed to cover anything conducive to national welfare; that decision as to what will promote such welfare rests with Congress alone, and the courts may not review its determination; and finally that the appropriation under attack was in fact for the general welfare of the United States. . . .

Since the foundation of the nation sharp differences of opinion have persisted as to the true interpretation of the phrase. Madison asserted it amounted to no more than a reference to the other powers enumerated in the subsequent clauses of the same section; that, as the United States is a government of limited and enumerated powers, the grant of power to tax and spend for the general national welfare must be confined to the enumerated legislative fields committed to the Congress. In this view the phrase is mere tautology, for taxation and appropriation are or may be necessary incidents of the exercise of any of the enumerated legislative powers. Hamilton, on the other hand, maintained the clause confers a power separate and distinct from those later enumerated, is not restricted in meaning by the grant of them, and Congress consequently has a substantive power to tax and to appropriate, limited only by the requirement that it shall be exercised to provide for the general welfare of the United States. Each contention has had the support

of those whose views are entitled to weight. This court has noticed the question, but has never found it necessary to decide which is the true construction. Mr Justice Story, in his Commentaries, espouses the Hamiltonian position. We shall not review the writings of public men and commentators or discuss the legislative practice. Study of all these leads us to conclude that the reading advocated by Mr Justice Story is the correct one. While, therefore, the power to tax is not unlimited, its confines are set in the clause which confers it, and not in those of section 8 which bestow and define the legislative powers of the Congress. It results that the power of Congress to authorize expenditure of public moneys for public purposes is not limited by the direct grants of legislative power found in the Constitution.

But the adoption of the broader construction leaves the power to spend subject to limitations. . . .

That the qualifying phrase must be given effect all advocates of broad construction admit. Hamilton, in his well-known Report on Manufactures, states that the purpose must be "general and not local." . . .

We are not now required to ascertain the scope of the phrase "general welfare of the United States" or to determine whether an appropriation in aid of agriculture falls within it. Wholly apart from that question, another principle embedded in our Constitution prohibits the enforcement of the Agricultural Adjustment Act. The Act invades the reserved rights of the States. It is a statutory plan to regulate and control agricultural production, a matter beyond the powers delegated to the Federal Government. The tax, the appropriation of the funds raised, and the direction for their disbursement, are but parts of the plan. They are but means to an unconstitutional end.

From the accepted doctrine that the United States is a government of delegated powers, it follows that those not expressly granted, or reasonably to be implied from such as are conferred, are reserved to the States or to the people. To forestall any suggestion to the contrary, the Tenth Amendment was adopted.

The same proposition, otherwise stated, is that powers not granted are prohibited. None to regulate agricultural production is given, and therefore legislation by Congress for that purpose is forbidden.

It is an established principle that the attainment of a prohibited end may not be accomplished under the pretext of the exertion of powers which are granted. . . .

These principles are as applicable to the power to lay taxes as to any other federal power. . . .

The power of taxation, which is expressly granted, may, of course, be adopted as a means to carry into operation another power also expressly granted. But resort to the taxing power to effectuate an end which is not legitimate, not within the scope of the Constitution, is obviously inadmissible. . . .

Third. If the taxing power may not be used as the instrument to enforce a regulation of matters of State concern with respect to which the Congress has no authority to interfere, may it, as in the present case, be employed to raise the money necessary to purchase a compliance which the Congress is powerless to command? The Government asserts that whatever might be said against the validity of the plan, if compulsory, it is constitutionally sound because the end is accomplished by voluntary co-operation. There are two sufficient answers to the contention. The regulation is not in fact voluntary. The farmer, of course, may refuse to comply, but the price of such refusal is the loss of benefits. The amount offered is intended to be sufficient to exert pressure on him to agree to the proposed regulation. The power to confer or withhold unlimited benefits is the power to coerce or destroy. If the cotton grower elects not to accept the benefits, he will receive less for his crops; those who receive payments will be able to undersell him. The result may well be financial ruin. The coercive purpose and intent of the statute is not obscured by the fact that it has not been perfectly successful. It is pointed out that, because there still remained a minority whom the rental and benefit payments were insufficient to induce

to surrender their independence of action, the Congress has gone further and, in the Bankhead Cotton Act, used the taxing power in a more directly minatory fashion to compel submission. This progression only serves more fully to expose the coercive purpose of the so-called tax imposed by the present Act. It is clear that the Department of Agriculture has properly described the plan as one to keep a non-co-operating minority in line. This is coercion by economic pressure. The asserted power of choice is illusory. . . .

But if the plan were one for purely voluntary co-operation it would stand no better so far as federal power is concerned. At best it is a scheme for purchasing with federal funds submission to federal regulation of a subject reserved to the States.

It is said that Congress has the undoubted right to appropriate money to executive officers for expenditure under contracts between the Government and individuals; that much of the total expenditures is so made. But appropriations and expenditures under contracts for proper governmental purposes cannot justify contracts which are not within federal power. And contracts for the reduction of acreage and the control of production are outside the range of that power. An appropriation to be expended by the United States under contracts calling for violation of a State law clearly would offend the Constitution. Is a statute less objectionable which authorizes expenditure of federal moneys to induce action in a field in which the United States has no power to intermeddle? The Congress cannot invade State jurisdiction to compel individual action; no more can it purchase such action.

Congress has no power to enforce its commands on the farmer to the ends sought by the Agricultural Adjustment Act. It must follow that it may not indirectly accomplish those ends by taxing and spending to purchase compliance. The Constitution and the entire plan of our Government negative any such use of the power to tax and to spend as the Act undertakes to authorize. It does not help to declare that local

conditions throughout the nation have created a situation of national concern; for this is but to say that whenever there is a widespread similarity of local conditions, Congress may ignore constitutional limitations upon its own powers and usurp those reserved to the States. If, in lieu of compulsory regulation of subjects within the States' reserved jurisdiction, which is prohibited, the Congress could invoke the taxing and spending power as a means to accomplish the same end, clause 1 of Section 8 of Article I would become the instrument for total subversion of the governmental powers reserved to the individual States.

If the Act before us is a proper exercise of the federal taxing power, evidently the regulation of all industry throughout the United States may be accomplished by similar exercises of the same power. It would be possible to exact money from one branch of an industry and pay it to another branch in every field of activity which lies within the province of the States. The mere threat of such a procedure might well induce the surrender of rights and the compliance with federal regulation as the price of continuance in business. . . .

Until recently no suggestion of the existence of any such power in the Federal Government has been advanced. The expressions of the framers of the Constitution, the decisions of this court interpreting that instrument, and the writings of great commentators will be searched in vain for any suggestion that there exists in the clause under discussion, or elsewhere in the Constitution, the authority whereby every provision and every fair implication from that instrument may be subverted, the independence of the individual States obliterated, and the United States converted into a central government exercising uncontrolled police power in every State of the Union, superseding all local control or regulation of the affairs or concerns of the States.

Hamilton himself, the leading advocate of broad interpretation of the power to tax and to appropriate for the general welfare, never suggested that any power

granted by the Constitution could be used for the destruction of local self-government in the States. Story countenances no such doctrine. It seems never to have occurred to them, or to those who have agreed with them, that the general welfare of the United States (which has aptly been termed "an indestructible Union, composed of indestructible States,") might be served by obliterating the constituent members of the Union. But to this fatal conclusion the doctrine contended for would inevitably lead. And its sole premise is that, though the makers of the Constitution, in erecting the Federal Government, intended sedulously to limit and define its powers, so as to reserve to the States and the people sovereign power, to be wielded by the States and their citizens and not to be invaded by the United States, they nevertheless by a single clause gave power to the Congress to tear down the barriers, to invade the States' jurisdiction, and to become a parliament of the whole people, subject to no restrictions save such as are self-imposed. The argument when seen in its true character and in the light of its inevitable results must be rejected. . . .

The judgment is affirmed.

Mr Justice STONE, dissenting. I think the judgment should be reversed. . . .

It is upon the contention that State power is infringed by purchased regulation of agricultural production that chief reliance is placed. It is insisted that, while the Constitution gives to Congress, in specific and unambiguous terms, the power to tax and spend, the power is subject to limitations which do not find their origin in any express provision of the Constitution and to which other expressly delegated powers are not subject.

The Constitution requires that public funds shall be spent for a defined purpose, the promotion of the general welfare. Their expenditure usually involves payment on terms which will insure use by the selected recipients within the limits of the constitutional pur-

pose. Expenditures would fail of their purpose and thus lose their constitutional sanction if the terms of payment were not such that by their influence on the action of the recipients the permitted end would be attained. The power of Congress to spend is inseparable from persuasion to action over which Congress has no legislative control. Congress may not command that the science of agriculture be taught in State universities. But if it would aid the teaching of that science by grants to State institutions, it is appropriate, if not necessary, that the grant be on the condition, incorporated in the Morrill Act, that it be used for the intended purpose. Similarly it would seem to be compliance with the Constitution, not violation of it, for the Government to take and the university to give a contract that the grant would be so used. It makes no difference that there is a promise to do an act which the condition is calculated to induce. Condition and promise are alike valid since both are in furtherance of the national purpose for which the money is appropriated.

These effects upon individual action, which are but incidents of the authorized expenditure of government money, are pronounced to be themselves a limitation upon the granted power, and so the time-honored principle of constitutional interpretation that the granted power includes all those which are incident to it is reversed. "Let the end be legitimate," said the great Chief Justice, "let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional" (*McCulloch v. Maryland*). This cardinal guide to constitutional exposition must now be re-phrased so far as the spending power of the Federal Government is concerned. Let the expenditure be to promote the general welfare, still, if it is needful in order to insure its use for the intended purpose to influence any action which Congress cannot command because within the sphere of State government, the expenditure is unconstitutional. And taxes otherwise

lawfully levied are likewise unconstitutional if they are appropriated to the expenditure whose incident is condemned. . . .

Such a limitation is contradictory and destructive of the power to appropriate for the public welfare, and is incapable of practical application. The spending power of Congress is in addition to the legislative power and not subordinate to it. This independent grant of the power of the purse, and its very nature, involving in its exercise the duty to insure expenditure within the granted power, presuppose freedom of selection among divers ends and aims, and the capacity to impose such conditions as will render the choice effective. It is a contradiction in terms to say that there is power to spend for the national welfare while rejecting any power to impose conditions reasonably adapted to the attainment of the end which alone would justify the expenditure.

The limitation now sanctioned must lead to absurd consequences. The Government may give seeds to farmers, but may not condition the gift upon their being planted in places where they are most needed or even planted at all. The Government may give money to the unemployed, but may not ask that those who get it shall give labor in return, or even use it to support their families. It may give money to sufferers from earthquake, fire, tornado, pestilence or flood, but may not impose conditions—health precautions designed to prevent the spread of disease, or induce the movement of population to safer or more sanitary areas. All that, because it is purchased regulation infringing State powers, must be left for the States, who are unable or unwilling to supply the necessary relief. The Government may spend its money for vocational rehabilitation, but it may not, with the consent of all concerned, supervise the process which it undertakes to aid. It may spend its money for the suppression of the boll weevil, but may not compensate the farmers for suspending the growth of cotton in the infected areas. It may aid State reforestation and forest fire prevention agencies, but

may not be permitted to supervise their conduct. It may support rural schools, but may not condition its grant by the requirement that certain standards be maintained. It may appropriate moneys to be expended by the Reconstruction Finance Corporation "to aid in financing agriculture, commerce, and industry," and to facilitate "the exportation of agricultural and other products." Do all its activities collapse because, in order to effect the permissible purpose, in myriad ways the money is paid out upon terms and conditions which influence action of the recipients within the States, which Congress cannot command? The answer would seem plain. If the expenditure is for a national public purpose, that purpose will not be thwarted because payment is on condition which will advance that purpose. The action which Congress induces by payments of money to promote the general welfare, but which it does not command or coerce, is but an incident to a specifically granted power, but a permissible means to a legitimate end. If appropriation in aid of a program of curtailment of agricultural production is constitutional, and it is not denied that it is, payment to farmers on condition that they reduce their crop acreage is constitutional. It is not any the less so because the farmer at his own option promises to fulfill the condition.

That the governmental power of the purse is a great one is not now for the first time announced. Every student of the history of government and economics is aware of its magnitude and of its existence in every civilized government. Both were well understood by the framers of the Constitution when they sanctioned the grant of the spending power to the Federal Government, and both were recognized by Hamilton and Story, whose views of the spending power as standing on a parity with the other powers specifically granted, have hitherto been generally accepted.

The suggestion that it must now be curtailed by judicial fiat because it may be abused by unwise use hardly rises to the dignity of argument. So may judicial power be abused. . . . "It must be remembered that

legislators are the ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts" (Justice Holmes, in *Missouri, Kansas & Texas R.R. Co. v. May*).

A tortured construction of the Constitution is not to be justified by recourse to extreme examples of reckless congressional spending which might occur if courts could not prevent expenditures which, even if they could be thought to effect any national purpose, would be possible only by action of a legislature lost to all sense of public responsibility. Such suppositions are addressed to the mind accustomed to believe that it is the business of the courts to sit in judgment on the wisdom of legislative action. Courts are not the only agency of government that must be assumed to have capacity to govern. Congress and the courts both unhappily may falter or be mistaken in the performance of their constitutional duty. But interpretation of our great charter of government which proceeds on any assumption that the responsibility for the preservation of our institutions is the exclusive concern of any one of the three branches of government, or that it alone can save them from destruction, is far more likely, in the long run, "to obliterate the constituent members" of "an indestructible union of indestructible States" than the frank recognition that language, even of a constitution, may mean what it says: that the power to tax and spend includes the power to relieve a nationwide economic maladjustment by conditional gifts of money.

38. PRESIDENT FRANKLIN ROOSEVELT'S ACCEPTANCE OF RENOMINATION FOR THE PRESIDENCY

27 JUNE 1936

[The Democratic National Convention met at Philadelphia on 23 June 1936 and nominated President Roosevelt as presidential candidate. The President's speech of acceptance was delivered on 27 June. The strong opposition to the New Deal, which had developed in the ranks of Big Business, led him to an attack on "economic royalists." Most significant, perhaps, was his declaration that on the success of the democratic experiment in America would depend the survival of democracy in the world at large.

In the election President Roosevelt won an unprecedented victory by 523 electoral votes to 8, or 27,751,612 popular votes to 16,681,913 over the Republican candidate, Governor Landon.]

Senator Robinson, Members of the Democratic Convention, my friends:

Here, and in every community throughout the land, we are met at a time of great moment to the future of the nation. It is an occasion to be dedicated to the simple and sincere expression of an attitude towards problems, the determination of which will profoundly affect America.

I come not only as the leader of a party, not only as a candidate for high office, but as one upon whom many critical hours have imposed and still impose a grave responsibility.

For the sympathy, help, and confidence with which Americans have sustained me in my task I am grateful. For their loyalty I salute the members of our great party, in and out of political life in every part of the Union. I salute those of other parties, especially those in the Congress of the United States who on so many occasions have put partisanship aside. I thank the Governors of the several States, their Legislatures, their State and local officials who participated

unselfishly and regardless of party in our efforts to achieve recovery and destroy abuses. Above all I thank the millions of Americans who have borne disaster bravely and have dared to smile through the storm.

America will not forget these recent years, will not forget that the rescue was not a mere party task. It was the concern of all of us. In our strength we rose together, rallied our energies together, applied the old rules of common sense, and together survived.

In those days we feared fear. That was why we fought fear. And to-day, my friends, we have won against the most dangerous of our foes. We have conquered fear.

But I cannot, with candor, tell you that all is well with the world. Clouds of suspicion, tides of ill-will and intolerance gather darkly in many places. In our own land we enjoy indeed a fullness of life greater than that of most nations. But the rush of modern civilization itself has raised for us new difficulties, new problems which must be solved if we are to preserve to the United States the political and economic freedom for which Washington and Jefferson planned and fought.

Philadelphia is a good city in which to write American history. This is fitting ground on which to reaffirm the faith of our fathers; to pledge ourselves to restore to the people a wider freedom; to give to 1936 as the founders gave to 1776—an American way of life.

That very word freedom, in itself and of necessity, suggests freedom from some restraining power. In 1776 we sought freedom from the tyranny of a political autocracy—from the eighteenth-century royalists who held special privileges from the Crown. It was to perpetuate their privilege that they governed without the consent of the governed; that they denied the right of free assembly and free speech; that they restricted the worship of God; that they put the average man's property and the average man's life in pawn to the mercenaries of dynastic power; that they regimented the people.

And so it was to win freedom from the tyranny of political autocracy that the American Revolution was

fought. That victory gave the business of governing into the hands of the average man, who won the right with his neighbors to make and order his own destiny through his own Government. Political tyranny was wiped out at Philadelphia on 4 July 1776.

Since that struggle, however, man's inventive genius released new forces in our land which re-ordered the lives of our people. The age of machinery, of railroads; of steam and electricity; the telegraph and the radio; mass production, mass distribution—all of these combined to bring forward a new civilization, and with it a new problem for those who sought to remain free.

For out of this modern civilization economic royalists carved new dynasties. New kingdoms were built upon concentration of control over material things. Through new uses of corporations, banks, and securities, new machinery of industry and agriculture, of labor and capital—all undreamed of by the fathers--the whole structure of modern life was impressed into this royal service.

There was no place among this royalty for our many thousands of small business men and merchants who sought to make a worthy use of the American system of initiative and profit. They were no more free than the worker or the farmer. Even honest and progressive-minded men of wealth, aware of their obligation to their generation, could never know just where they fitted into this dynastic scheme of things.

It was natural and perhaps human that the privileged princes of these new economic dynasties, thirsting for power, reached out for control over Government itself. They created a new despotism and wrapped it in the robes of legal sanction. In its service new mercenaries sought to regiment the people, their labor, and their property. And as a result the average man once more confronts the problem that faced the Minute Man.

The hours men and women worked, the wages they received, the conditions of their labor—these had passed beyond the control of the people, and were imposed by this new industrial dictatorship. The savings

of the average family, the capital of the small business man, the investments set aside for old age—other people's money—these were tools which the new economic royalty used to dig itself in.

Those who tilled the soil no longer reaped the rewards which were their right. The small measure of their gains was decreed by men in distant cities.

Throughout the nation opportunity was limited by monopoly. Individual initiative was crushed in the cogs of a great machine. The field open for free business was more and more restricted. Private enterprise, indeed, became too private. It became privileged enterprise, not free enterprise.

An old English judge once said: "Necessitous men are not free men." Liberty requires opportunity to make a living—a living decent according to the standard of the time, a living which gives man not only enough to live by, but something to live for.

For too many of us the political equality we once had won was meaningless in the face of economic inequality. A small group had concentrated into their own hands an almost complete control over other people's property, other people's money, other people's labor—other people's lives. For too many of us life was no longer free; liberty no longer real; men could no longer follow the pursuit of happiness.

Against economic tyranny such as this, the American citizen could appeal only to the organized power of Government. The collapse of 1929 showed up the despotism for what it was. The election of 1932 was the people's mandate to end it. Under that mandate it is being ended.

The royalists of the economic order have conceded that political freedom was the business of the Government, but they have maintained that economic slavery was nobody's business. They granted that the Government could protect the citizen in his right to vote, but they denied that the Government could do anything to protect the citizen in his right to work and his right to live.

To-day we stand committed to the proposition that freedom is no half-and-half affair. If the average citizen is guaranteed equal opportunity in the polling place, he must have equal opportunity in the market place.

These economic royalists complain that we seek to overthrow the institutions of America. What they really complain of is that we seek to take away their power. Our allegiance to American institutions requires the overthrow of this kind of power. In vain they seek to hide behind the Flag and the Constitution. In their blindness they forget what the Flag and the Constitution stand for. Now, as always, they stand for democracy, not tyranny; for freedom, not subjection; and against a dictatorship by mob rule and the over-privileged alike.

The brave and clear platform adopted by this Convention, to which I heartily subscribe, sets forth that Government in a modern civilization has certain inescapable obligations to its citizens, among which are protection of the family and the home, the establishment of a democracy of opportunity, and aid to those overtaken by disaster.

But the resolute enemy within our gates is ever ready to beat down our words unless in greater courage we will fight for them.

For more than three years we have fought for them. This Convention, in every word and deed, has pledged that that fight will go on.

The defeats and victories of these years have given to us as a people a new understanding of our Government and of ourselves. Never since the early days of the New England town meeting have the affairs of Government been so widely discussed and so clearly appreciated. It has been brought home to us that the only effective guide for the safety of this most worldly of worlds, the greatest guide of all, is moral principle.

We do not see faith, hope, and charity as unattainable ideals, but we use them as stout supports of a nation fighting the fight for freedom in a modern civilization.

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Faith—in the soundness of democracy in the midst of dictatorships.

Hope—renewed because we know so well the progress we have made.

Charity—in the true spirit of that grand old word. For charity literally translated from the original means love, the love that understands, that does not merely share the wealth of the giver, but in true sympathy and wisdom helps men to help themselves.

We seek not merely to make Government a mechanical implement, but to give it the vibrant personal character that is the very embodiment of human charity.

We are poor indeed if this nation cannot afford to lift from every recess of American life the dread fear of the unemployed that they are not needed in the world. We cannot afford to accumulate a deficit in the books of human fortitude.

In the place of the palace of privilege we seek to build a temple out of faith and hope and charity.

It is a sobering thing, my friends, to be a servant of this great cause. We try in our daily work to remember that the cause belongs not to us, but to the people. The standard is not in the hands of you and me alone. It is carried by America. We seek daily to profit from experience, to learn to do better as our task proceeds.

Governments can err, Presidents do make mistakes, but the immortal Dante tells us that divine justice weighs the sins of the cold-blooded and the sins of the warm-hearted in different scales.

Better the occasional faults of a Government that lives in a spirit of charity than the consistent omissions of a Government frozen in the ice of its own indifference.

There is a mysterious cycle in human events. To some generations much is given. Of other generations much is expected. This generation of Americans has a rendezvous with destiny.

In this world of ours, in other lands, there are some people who, in times past, have lived and fought for freedom, and seem to have grown too weary to carry on the fight. They have sold their heritage of freedom

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for the illusion of a living. They have yielded their democracy.

I believe in my heart that only our success can stir their ancient hope. They begin to know that here in America we are waging a great and successful war. It is not alone a war against want and destitution and economic demoralization. It is more than that; it is a war for the survival of democracy. We are fighting to save a great and precious form of government for ourselves and for the world.

I accept the commission you have tendered me. I join with you. I am enlisted for the duration of the war.

39. PRESIDENT ROOSEVELT'S PROPOSAL FOR THE REFORM OF THE FEDERAL JUDICIARY, 1937

[The invalidation by the Supreme Court of the National Recovery Act, the Agricultural Adjustment Act, and the Guffey Coal Act of 1935 led to a revival of criticism of that body. In particular, the language used by some of the Justices, especially Justice Roberts in the *Hoosac Mills* case, seemed to point to the conclusion that members of the Court were in part actuated by personal prejudices against the social changes resulting from the New Deal. After his sweeping victory in the presidential election of November 1936, President Roosevelt determined on reforming the Court. His measures were embodied in a Bill before Congress, and on 9 March 1937, in a broadcast address, he explained them to the nation. They included a re-organisation of the lower federal courts and the appointment of one new Justice of the Supreme Court for every Justice who did not retire when he had passed the age of seventy and had served ten years, up to a limit of fifteen Justices in all.

The Bill was referred to the Senate Judiciary Committee, who recommended its rejection in strong terms, and it failed to pass through Congress. Although this appeared on the face of it to be the most considerable defeat the President

had suffered, it was clear before long that the Court was becoming readier to uphold the constitutional validity of the legislation of the New Deal. On 24 August 1937 a Judiciary Reform Act was passed, which only went a very little way towards meeting the demands of the reformers. It limited the powers of the lower courts to pass judgment on the constitutional validity of Acts of Congress.]

(a) *President Franklin Roosevelt's Broadcast Address,
9 March 1937.*

. . . To-night, sitting at my desk in the White House, I make my first radio report to the people in my second term of office. . . .

The American people have learned from the depression. For in the last three national elections an overwhelming majority of them voted a mandate that the Congress and the President begin the task of providing that protection—not after long years of debate, but now.

The courts, however, have cast doubts on the ability of the elected Congress to protect us against catastrophe by meeting squarely our modern social and economic conditions.

We are at a crisis in our ability to proceed with that protection. It is a quiet crisis. There are no lines of depositors outside closed banks. But to the far-sighted it is far-reaching in its possibilities of injury to America.

I want to talk with you very simply about the need for present action in this crisis—the need to meet the unanswered challenge of one-third of a nation ill-nourished, ill-clad, ill-housed.

Last Thursday I described the American form of government as a three-horse team provided by the Constitution to the American people so that their field might be plowed. The three horses are, of course, the three branches of government—the Congress, the executive, and the courts. Two of the horses are pulling in unison to-day; the third is not. Those who have intimated that the President of the United States is trying to drive that team overlook the simple fact that

the President, as Chief Executive, is himself one of the three horses.

It is the American people themselves who are in the driver's seat.

It is the American people themselves who want the furrow plowed.

It is the American people themselves who expect the third horse to pull in unison with the other two.

I hope that you have reread the Constitution of the United States. Like the Bible, it ought to be read again and again.

It is an easy document to understand when you remember that it was called into being because the Articles of Confederation under which the Original Thirteen States tried to operate after the Revolution showed the need of a National Government with power enough to handle national problems. In its preamble the Constitution states that it was intended to form a more perfect Union and promote the general welfare; and the powers given to the Congress to carry out these purposes can be best described by saying that they were all the powers needed to meet each and every problem which then had a national character and which could not be met by merely local action.

But the framers went further. Having in mind that in succeeding generations many other problems then undreamed of would become national problems, they gave to the Congress the ample broad powers "to levy taxes * * * and provide for the common defence and general welfare of the United States."

That, my friends, is what I honestly believe to have been the clear and underlying purpose of the patriots who wrote a Federal Constitution to create a National Government with national power, intended as they said, "to form a more perfect union * * * for ourselves and our posterity."

For nearly twenty years there was no conflict between the Congress and the Court. Then, in 1803, . . . The Court claimed the power to declare it [a statute] unconstitutional and did so declare it. But a little later

the Court itself admitted that it was an extraordinary power to exercise, and through Mr Justice Washington laid down this limitation upon it: "It is but a decent respect due to the wisdom, the integrity, and the patriotism of the legislative body, by which any law is passed, to presume in favor of its validity until its violation of the Constitution is proved beyond all reasonable doubt."

But since the rise of the modern movement for social and economic progress through legislation, the Court has more and more often and more and more boldly asserted a power to veto laws passed by the Congress and State legislatures in complete disregard of this original limitation.

In the last four years the sound rule of giving statutes the benefit of all reasonable doubt has been cast aside. The Court has been acting not as a judicial body, but as a policy-making body.

When the Congress has sought to stabilize national agriculture, to improve the conditions of labor, to safeguard business against unfair competition, to protect our national resources, and in many other ways to serve our clearly national needs, the majority of the Court has been assuming the power to pass on the wisdom of these Acts of the Congress—and to approve or disapprove the public policy written into these laws.

That is not only my accusation. It is the accusation of most distinguished Justices of the present Supreme Court. I have not the time to quote to you all the language used by dissenting Justices in many of these cases. But in the case holding the Railroad Retirement Act unconstitutional, for instance, Chief Justice Hughes said in a dissenting opinion that the majority opinion was "a departure from sound principles," and placed "an unwarranted limitation upon the commerce clause." And three other Justices agreed with him.

In the case holding the A.A.A. unconstitutional, Justice Stone said of the majority opinion that it was a "tortured construction of the Constitution." And two other Justices agreed with him.

In the case holding the New York Minimum Wage Law unconstitutional, Justice Stone said that the majority were actually reading into the Constitution their own "personal economic predilections," and that if the legislative power is not left free to choose the methods of solving the problems of poverty, subsistence, and health of large numbers in the community, then "government is to be rendered impotent." And two other Justices agreed with him.

In the face of these dissenting opinions, there is no basis for the claim made by some members of the Court that something in the Constitution has compelled them regretfully to thwart the will of the people.

In the face of such dissenting opinions, it is perfectly clear that as Chief Justice Hughes has said, "We are under a Constitution, but the Constitution is what the judges say it is."

The Court in addition to the proper use of its judicial functions has improperly set itself up as a third House of the Congress—a super-legislature, as one of the Justices has called it—reading into the Constitution words and implications which are not there, and which were never intended to be there.

We have, therefore, reached a point as a nation where we must take action to save the Constitution from the Court, and the Court from itself. We must find a way to take an appeal from the Supreme Court to the Constitution itself. We want a Supreme Court which will do justice under the Constitution—not over it. In our courts we want a government of laws and not of men.

I want—as all Americans want—an independent judiciary as proposed by the framers of the Constitution. That means a Supreme Court that will enforce the Constitution as written—that will refuse to amend the Constitution by the arbitrary exercise of judicial power—amendment by judicial say-so. It does not mean a judiciary so independent that it can deny the existence of facts universally recognized.

How, then, could we proceed to perform the mandate given us? It was said in last year's Democratic

platform, "If these problems cannot be effectively solved within the Constitution, we shall seek such clarifying amendment as will assure the power to enact those laws, adequately to regulate commerce, protect public health and safety, and safeguard economic security." In other words, we said we would seek an amendment only if every other possible means by legislation were to fail.

When I commenced to review the situation with the problem squarely before me, I came by a process of elimination to the conclusion that, short of amendments, the only method which was clearly constitutional, and would at the same time carry out other much-needed reforms, was to infuse new blood into all our courts. We must have men worthy and equipped to carry out impartial justice. But at the same time we must have judges who will bring to the courts a present-day sense of the Constitution—judges who will retain in the courts the judicial functions of a court and reject the legislative powers which the courts have to-day assumed.

In forty-five out of forty-eight States of the Union, judges are chosen not for life but for a period of years. In many States judges must retire at the age of seventy. Congress has provided financial security by offering life pensions at full pay for Federal judges on all courts who are willing to retire at seventy. In the case of Supreme Court Justices that pension is \$20,000 a year. But all Federal judges, once appointed, can, if they choose, hold office for life no matter how old they may get to be.

What is my proposal? It is simply this: Whenever a judge or justice of any Federal court has reached the age of seventy and does not avail himself of the opportunity to retire on a pension, a new member shall be appointed by the President then in office, with the approval, as required by the Constitution, of the Senate of the United States.

That plan has two chief purposes: By bringing into the judicial system a steady and continuing stream of new and younger blood, I hope, first, to make the

administration of all Federal justice speedier and therefore less costly; secondly, to bring to the decision of social and economic problems younger men who have had personal experience and contact with modern facts and circumstances under which average men have to live and work. This plan will save our National Constitution from hardening of the judicial arteries.

The number of judges to be appointed would depend wholly on the decision of present judges now over seventy or those who would subsequently reach the age of seventy.

If, for instance, any one of the six Justices of the Supreme Court now over the age of seventy should retire as provided under the plan, no additional place would be created. Consequently, although there never can be more than fifteen, there may be only fourteen, or thirteen, or twelve, and there may be only nine.

There is nothing novel or radical about this idea. It seeks to maintain the Federal bench in full vigor. It has been discussed and approved by many persons of high authority ever since a similar proposal passed the House of Representatives in 1869.

Why was the age fixed at seventy? Because the laws of many States, the practice of the civil service, the regulations of the Army and Navy, and the rules of many of our universities and of almost every great private business enterprise commonly fix the retirement age at seventy years or less.

The statute would apply to all the courts in the Federal system. There is general approval so far as the lower Federal courts are concerned. The plan has met opposition only so far as the Supreme Court of the United States itself is concerned. If such a plan is good for the lower courts, it certainly ought to be equally good for the highest court, from which there is no appeal.

Those opposing this plan have sought to arouse prejudice and fear by crying that I am seeking to "pack" the Supreme Court and that a baneful precedent will be established.

What do they mean by the words "packing the Court"?

Let me answer this question with a bluntness that will end all honest misunderstanding of my purposes.

If by that phrase "packing the Court" it is charged that I wish to place on the bench spineless puppets who would disregard the law and would decide specific cases as I wished them to be decided, I make this answer: That no President fit for his office would appoint, and no Senate of honorable men fit for their office would confirm, that kind of appointees to the Supreme Court.

But if by that phrase the charge is made that I would appoint, and the Senate would confirm, Justices worthy to sit beside present members of the Court who understand those modern conditions; that I will appoint Justices who will not undertake to override the judgment of the Congress on legislative policy; that I will appoint Justices who will act as Justices and not as legislators—if the appointment of such Justices can be called "packing the Courts"—then I say that I, and with me the vast majority of the American people, favor doing just that thing—now.

Is it a dangerous precedent for the Congress to change the number of the Justices? The Congress has always had, and will have, that power. The number of Justices has been changed several times before—in the administrations of John Adams and Thomas Jefferson, both signers of the Declaration of Independence, Andrew Jackson, Abraham Lincoln, and Ulysses S. Grant.

I suggest only the addition of Justices to the bench in accordance with a clearly defined principle relating to a clearly defined age limit. Fundamentally, if in the future America cannot trust the Congress it elects to refrain from abuse of our constitutional usages, democracy will have failed far beyond the importance to it of any kind of precedent concerning the judiciary.

We think it so much in the public interest to maintain a vigorous judiciary that we encourage the retirement of elderly judges by offering them a life pension at full salary. Why then should we leave the fulfilment of this public policy to chance or make it dependent upon the desire or prejudice of any individual Justice?

It is the clear intention of our public policy to provide for a constant flow of new and younger blood into the judiciary. Normally, every President appoints a large number of district and circuit judges and a few members of the Supreme Court. Until my first term practically every President of the United States had appointed at least one member of the Supreme Court. President Taft appointed five members and named a Chief Justice; President Wilson three; President Harding four, including a Chief Justice; President Coolidge one; President Hoover three, including a Chief Justice.

Such a succession of appointments should have provided a court well balanced as to age. But chance and the disinclination of individuals to leave the Supreme Bench have now given us a Court in which five Justices will be over seventy-five years of age before next June and one over seventy. Thus a sound public policy has been defeated.

I now propose that we establish by law an assurance against any such ill-balanced Court in the future. I propose that hereafter, when a judge reaches the age of seventy, a new and younger judge shall be added to the Court automatically. In this way I propose to enforce a sound public policy by law instead of leaving the composition of our Federal courts, including the highest, to be determined by chance or the personal decision of individuals.

If such a law as I propose is regarded as establishing a new precedent, is it not a most desirable precedent?

Like all lawyers, like all Americans, I regret the necessity of this controversy. But the welfare of the United States, and indeed of the Constitution itself, is what we all must think about first. Our difficulty with the Court to-day rises not from the Court as an institution but from human beings within it. But we cannot yield our constitutional destiny to the personal judgment of a few men who, being fearful of the future, would deny us the necessary means of dealing with the present.

This plan of mine is no attack on the Court; it seeks to restore the Court to its rightful and historic place

in our system of constitutional government and to have it resume its high task of building anew on the Constitution "a system of living law."

I have thus explained to you the reasons that lie behind our efforts to secure results by legislation within the Constitution. I hope that thereby the difficult process of constitutional amendment may be rendered unnecessary. . . .

I am in favor of action through legislation—

First, because I believe that it can be passed at this session of the Congress.

Second, because it will provide a reinvigorated, liberal-minded judiciary necessary to furnish quicker and cheaper justice from bottom to top.

Third, because it will provide a series of Federal courts willing to enforce the Constitution as written, and unwilling to assert legislative powers by writing into it their own political and economic policies.

During the past half-century the balance of power between the three great branches of the Federal Government has been tipped out of balance by the courts in direct contradiction of the high purposes of the framers of the Constitution. It is my purpose to restore that balance. You who know me will accept my solemn assurance that in a world in which democracy is under attack I seek to make American democracy succeed.

(b) The Report of the Senate Judiciary Committee, 1937.

We recommend the rejection of this Bill as a needless, futile, and utterly dangerous abandonment of constitutional principle.

It was presented to the Congress in a most intricate form and for reasons that obscured its real purpose.

It would not banish age from the bench nor abolish divided decisions.

It would not affect the power of any court to hold laws unconstitutional nor withdraw from any judge the authority to issue injunctions.

It would not reduce the expense of litigation nor speed the decision of cases.

It is a proposal without precedent and without justification.

It would subjugate the courts to the will of Congress and the President and thereby destroy the independence of the judiciary, the only certain shield of individual rights.

It contains the germ of a system of centralized administration of law that would enable an executive so minded to send his judges into every judicial district in the land to sit in judgment on controversies between the Government and the citizen.

It points the way to the evasion of the Constitution and establishes the method whereby the people may be deprived of their right to pass upon all amendments of the fundamental law.

It stands now before the country, acknowledged by its proponents as a plan to force judicial interpretation of the Constitution, a proposal that violates every sacred tradition of American democracy.

Under the form of the Constitution it seeks to do that which is unconstitutional.

Its ultimate operation would be to make this Government one of men rather than one of law, and its practical operation would be to make the Constitution what the executive or legislative branches of the Government choose to say it is—an interpretation to be changed with each change of administration.

It is a measure which should be so emphatically rejected that its parallel will never again be presented to the free representatives of the free people of America.

WILLIAM H. KING.
FREDERICK VAN NUYS.
PATRICK MCCARRAN.
CARL A. HATCH.
EDWARD R. BURKE.
TOM CONNALLY.
JOSEPH C. O'MAHONEY.
WILLIAM E. BORAH.
WARREN R. AUSTIN.
FREDERICK STRIWER.

40. THE NEUTRALITY ACT, 1937

[During the summer of 1935 Italy's evident designs on Abyssinia created a serious international crisis. In the United States the sentiment of Isolationism was strong, and on 31 August Congress passed a Neutrality Resolution, having the force of law, which required the President to issue a Proclamation "upon the outbreak or during the progress of war between two or more foreign States" and then "definitely enumerate the arms, ammunition, or implements of war, the export of which is prohibited by this Act". It set up a National Munitions Control Board to license the trade in armaments, forbade American ships to carry armaments to belligerent ports or to neutral ports for reshipment, and gave discretionary authority to the President to prohibit American citizens from travelling in the vessels of belligerents. In consequence of this Resolution, President Roosevelt placed an embargo, on 3 October, on arms to Italy and Abyssinia. In February 1936 Congress extended the previous resolution until 1 May 1937, with three amendments, the first requiring the President to issue his Proclamation whenever he "shall find that there exists a state of war"; the second prohibiting the floating of loans to belligerents; and the third stating that the Resolution was not applicable to American Republics at war with non-American States. On 8 January 1937, a Joint Resolution of Congress prohibited the export of arms to either party in the Spanish Civil War.

The Neutrality Act of 1937 was signed by the President on 1 May 1937. (Disputes between the two Houses had delayed its passage until the last moment, and the Bill had to be sent to the President, who was in New Orleans, by air.) The previous neutrality legislation was confirmed, with certain important changes. The embargo on arms was not to refer to raw materials, American vessels trading with belligerents were not to be armed, and American citizens were forbidden to travel in belligerent vessels. Most important was the law that a belligerent Power purchasing in America would have to pay the shipment and assume the title before the goods left the United States—the so-called "cash-and-carry" clause.

The Act represented a substantial victory for the Isolationists, and it should be compared with the demands made in the abortive Gore-McLemore Resolution of February

1916 (see No. 5). On 5 September 1939 President Roosevelt issued the necessary proclamation under the Act, and on 21 September Congress was summoned into Special Session. The President proposed certain changes in the Neutrality legislation as essential to keep the United States out of the war, and on 3 November Congress passed a new Neutrality Act. This permitted belligerents to purchase munitions from the United States on the basis of the "cash-and-carry" system, and also forbade American citizens or vessels to enter "combat areas" to be defined by the President. Many of the clauses of the Act were similar to those in the Act of 1937. This Act, which was a decided victory for the Administration, marked the first reverse of the Isolationists.

On 11 March 1941 Congress passed the Lend and Lease Act, which nullified the main financial clauses of the earlier Neutrality legislation by allowing the transfer of munitions of war to any country whose defence the President deemed vital for that of the United States, by loan, exchange, sale, or lease. On 13 November 1941 Congress repealed those provisions in the Neutrality Act of 1939 which had prohibited the arming of merchant ships and their voyages to "combat areas" or belligerent ports.]

JOINT RESOLUTION.

To amend the joint resolution, approved 31 August 1935, as amended.

Resolved . . .

Export of Arms, Ammunition, and Implements of War.

SEC. 1. (a) Whenever the President shall find that there exists a state of war between, or among, two or more foreign States, the President shall proclaim such fact, and it shall thereafter be unlawful to export, or attempt to export, or cause to be exported, arms, ammunition, or implements of war from any place in the United States to any belligerent State named in such proclamation, or to any neutral State for transshipment to, or for the use of, any such belligerent State.

(b) The President shall, from time to time, by proclamation, extend such embargo upon the export of

arms, ammunition, or implements of war to other States as and when they may become involved in such war.

(c) Whenever the President shall find that a state of civil strife exists in a foreign State and that such civil strife is of a magnitude or is being conducted under such conditions that the export of arms, ammunition, or implements of war from the United States to such foreign State would threaten or endanger the peace of the United States, the President shall proclaim such fact, and it shall thereafter be unlawful to export, or attempt to export, or cause to be exported, arms, ammunition, or implements of war from any place in the United States to such foreign State, or to any neutral State for transshipment to, or for the use of, such foreign State.

(d) The President shall, from time to time by proclamation, definitely enumerate the arms, ammunition, and implements of war, the export of which is prohibited by this section.

Export of other Articles and Materials.

SEC. 2. (a) Whenever the President shall have issued a proclamation under the authority of section 1 of this Act and he shall thereafter find that the placing of restrictions on the shipment of certain articles or materials in addition to arms, ammunition, and implements of war from the United States to belligerent States, or to a State wherein civil strife exists, is necessary to promote the security or preserve the peace of the United States or to protect the lives of citizens of the United States, he shall so proclaim, and it shall thereafter be unlawful, for any American vessel to carry such articles or materials to any belligerent State, or to a State wherein civil strife exists, named in such proclamation issued under the authority of section 1 of this Act, or to any neutral State for transshipment to, or for the use of, any such belligerent State or any such State wherein civil strife exists. The President shall by proclamation from time to time definitely enu-

merate the articles and materials which it shall be unlawful for American vessels to so transport. . . .

(c) The President shall from time to time by proclamation extend such restrictions as are imposed under the authority of this section to other States as and when they may be declared to become belligerent States under proclamations issued under the authority of section 1 of this Act.

(d) The President may from time to time change, modify, or revoke in whole or in part any proclamations issued by him under the authority of this section. . . .

Financial Transactions.

SEC. 3. (a) Whenever the President shall have issued a proclamation under the authority of section 1 of this Act, it shall thereafter be unlawful for any person within the United States to purchase, sell, or exchange bonds, securities, or other obligations of the government of any belligerent State, or of any State wherein civil strife exists, named in such proclamation, or of any political subdivision of any such State, or of any person acting for or on behalf of the government of any such State, or of any faction or asserted government within any such State wherein civil strife exists, or of any person acting for or on behalf of any faction or asserted government within any such State wherein civil strife exists, issued after the date of such proclamation, or to make any loan or extend any credit to any such government, political subdivision, faction, asserted government, or person, or to solicit or receive any contribution for any such government, political subdivision, faction, asserted government, or person: *Provided*, That if the President shall find that such action will serve to protect the commercial or other interests of the United States or its citizens, he may, in his discretion, and to such extent and under such regulations as he may prescribe, except from the operation of this section ordinary commercial credits and short-time obligations in aid of legal transactions

and of a character customarily used in normal peacetime commercial transactions. Nothing in this subsection shall be construed to prohibit the solicitation or collection of funds to be used for medical aid and assistance, or for food and clothing to relieve human suffering, when such solicitation or collection of funds is made on behalf of and for use by any person or organization which is not acting for or on behalf of any such government, political subdivision, faction, or asserted government, but all such solicitations and collections of funds shall be subject to the approval of the President and shall be made under such rules and regulations as he shall prescribe. . . .

Exceptions—American Republics.

SEC. 4. This Act shall not apply to an American republic or republics engaged in war against a non-American State or States, provided the American republic is not co-operating with a non-American State or States in such war.

National Munitions Control Board.

SEC. 5. (a) There is hereby established a National Munitions Control Board (hereinafter referred to as the "Board") to carry out the provisions of this Act. The Board shall consist of the Secretary of State, who shall be chairman and executive officer of the Board, the Secretary of the Treasury, the Secretary of War, the Secretary of the Navy, and the Secretary of Commerce. Except as otherwise provided in this Act, or by other law, the administration of this Act is vested in the Department of State. The Secretary of State shall promulgate such rules and regulations with regard to the enforcement of this section as he may deem necessary to carry out its provisions. The Board shall be convened by the chairman and shall hold at least one meeting a year.

(b) Every person who engages in the business of manufacturing, exporting, or importing any of the

arms, ammunition, or implements of war referred to in this Act, whether as an exporter, importer, manufacturer, or dealer, shall register with the Secretary of State his name, or business name, principal place of business, and places of business in the United States, and a list of the arms, ammunition, and implements of war which he manufactures, imports, or exports.

(c) Every person required to register under this section shall notify the Secretary of State of any change in the arms, ammunition, or implements of war which he exports, imports, or manufactures; . . .

(d) It shall be unlawful for any person to export, or attempt to export, from the United States to any other State, any of the arms, ammunition, or implements of war referred to in this Act, or to import, or attempt to import, to the United States from any other State, any of the arms, ammunition, or implements of war referred to in this Act, without first having obtained a license therefor. . . .

(k) The President is hereby authorized to proclaim upon recommendation of the Board from time to time a list of articles which shall be considered arms, ammunition, and implements of war for the purposes of this section.

*American Vessels Prohibited from Carrying Arms
to Belligerent States.*

SEC. 6. (a) Whenever the President shall have issued a proclamation under the authority of section 1 of this Act, it shall thereafter be unlawful, until such proclamation is revoked, for any American vessel to carry any arms, ammunition, or implements of war to any belligerent State, or to any State wherein civil strife exists, named in such proclamation, or to any neutral State for transshipment to, or for the use of, any such belligerent State or any such State wherein civil strife exists. . . .

Use of American Ports as Base of Supply.

SEC. 7. (a) Whenever, during any war in which the United States is neutral, the President, or any person

thereunto authorized by him, shall have cause to believe that any vessel, domestic or foreign, whether requiring clearance or not, is about to carry out of a port of the United States, fuel, men, arms, ammunition, implements of war, or other supplies to any warship, tender, or supply ship of a belligerent State, but the evidence is not deemed sufficient to justify forbidding the departure of the vessel as provided for by section 1, title V, chapter 30, of the Act approved 15 June 1917, and if, in the President's judgment, such action will serve to maintain peace between the United States and foreign States, or to protect the commercial interests of the United States and its citizens, or to promote the security or neutrality of the United States, he shall have the power and it shall be his duty to require the owner, master, or person in command thereof, before departing from a port of the United States, to give a bond to the United States, with sufficient sureties, in such amount as he shall deem proper, conditioned that the vessel will not deliver the men, or any part of the cargo, to any warship, tender, or supply ship of a belligerent State.

(b) If the President, or any person thereunto authorized by him, shall find that a vessel, domestic or foreign, in a port of the United States, has previously cleared from a port of the United States during such war and delivered its cargo or any part thereof to a warship, tender, or supply ship of a belligerent State, he may prohibit the departure of such vessel during the duration of the war.

Submarines and Armed Merchant Vessels.

Sec. 8. Whenever, during any war in which the United States is neutral, the President shall find that special restrictions placed on the use of the ports and territorial waters of the United States by the submarines or armed merchant vessels of a foreign State, will serve to maintain peace between the United States and foreign States, or to protect the commercial interests of the United States and its citizens, or to

promote the security of the United States, and shall make proclamation therefore, it shall thereafter be unlawful for any such submarine or armed merchant vessel to enter a port or the territorial waters of the United States or to depart therefrom, except under such conditions and subject to such limitations as the President may prescribe. Whenever, in his judgment, the conditions which have caused him to issue his proclamation have ceased to exist, he shall revoke his proclamation, and the provisions of this section shall thereupon cease to apply.

Travel on Vessels of Belligerent States.

SEC. 9. Whenever the President shall have issued a proclamation under the authority of section 1 of this Act it shall thereafter be unlawful for any citizen of the United States to travel on any vessel of the State or States named in such proclamation, except in accordance with such rules and regulations as the President shall prescribe: . . .

Arming of American Merchant Vessels Prohibited.

SEC. 10. Whenever the President shall have issued a proclamation under the authority of section 1, it shall thereafter be unlawful, until such proclamation is revoked, for any American vessel engaged in commerce with any belligerent State, or any State wherein civil strife exists, named in such proclamation, to be armed or to carry any armament, arms, ammunition, or implements of war, except small arms and ammunition thereof which the President may deem necessary and shall publicly designate for the preservation of discipline aboard such vessels. . . .

41. NATIONAL LABOR RELATIONS BOARD *v.* JONES AND LAUGHLIN STEEL CORPORATION, 1937

[The Beaver Valley Lodge No. 200, affiliated with the Amalgamated Association of Iron, Steel, and Tin Workers of America, instituted proceedings against the Jones and Laughlin Steel Corporation, one of the largest in America, with interests in several States, before the National Labor Relations Board under sections 8 and 10 of the Wagner Act (No. 34), on the grounds that the Corporation was discriminating against members of the union. The Board upheld the charges and ordered the Corporation to desist from such discrimination, to reinstate the employees dismissed, and to make good their losses in pay. When the Corporation failed to comply, the Board petitioned the Circuit Court to enforce the order, and on this Court denying the petition the case came before the Supreme Court.

The defendants claimed first, leaning particularly on the decision in *Schechter Poultry Corporation v. United States* (No. 33), that the Act invaded the reserved powers of the States and that it was not a true regulation of interstate commerce. The Court held that section 10 (a) of the Act made it clear that this clause was concerned only with unfair labour practice affecting commerce. It was then necessary to determine whether in the particular case in question the unfair labour practice came within the scope of this limitation. The Court held that the right of employees to self-organisation and to select representatives for collective bargaining without restraint by their employer was a fundamental right, which Congress might safeguard.

The defendants also claimed that the industrial activities of their manufacturing department were not subject to federal regulation, in fact that manufacturing itself is not commerce. The Court held that although activities might be intrastate in character when separately considered, if they had so close a relation to interstate commerce that their control was essential to protect that commerce, Congress could not be denied the power to exercise that control.

It had then to be decided what was the effect on interstate commerce of the labour practice involved. A stoppage on account of industrial strife of the Corporation's manufacturing operations would have seriously affected interstate

commerce, and the rights of employees to self-organization and to the choice of representatives for collective bargaining were often an essential condition of industrial peace. Congress, then, had constitutionally to safeguard these rights.

Finally, the Corporation claimed that the Act was a breach of the "due process" clause of the Fifth Amendment, and that it had a right to conduct its business in an orderly way without arbitrary restraints. But the Court held that employers had their correlative rights of organization, and restraint to prevent an unjust interference with that right could not be considered arbitrary.

This decision was a great victory for the Roosevelt administration. The opinion on the relation between manufacture and interstate commerce seemed to go a good way towards reversing the effects of the *Schechter Corporation* case, and that on the right of employees to form organizations upheld recent decisions which had nullified the effects of *Adair v. United States* in 1908 (see Vol. III.)]

HUGHES, C.J. . . . Contesting the ruling of the Board, the respondent argues (1) that the Act is in reality a regulation of labor relations and not of interstate commerce; (2) that the Act can have no application to the respondent's relations with its production employees because they are not subject to regulation by the Federal Government; and (3) that the provisions of the Act violate section 2 of Article III and the Fifth and Seventh Amendments of the Constitution of the United States.

The facts as to the nature and scope of the business of the Jones and Laughlin Steel Corporation have been found by the Labor Board and, so far as they are essential to the determination of this controversy, they are not in dispute. The Labor Board has found: The Corporation is organized under the laws of Pennsylvania and has its principal office at Pittsburgh. It is engaged in the business of manufacturing iron and steel in plants situated in Pittsburgh and nearby Aliquippa, Pennsylvania. It manufactures and distributes a widely diversified line of steel and pig-iron, being the fourth largest producer of steel in the United States. With its subsidiaries—nineteen in number—it is a

completely integrated enterprise, owning and operating ore, coal, and limestone properties, lake and river transportation facilities, and terminal railroads located at its manufacturing plants. It owns or controls mines in Michigan and Minnesota. It operates four ore steamships on the Great Lakes, used in the transportation of ore to its factories. It owns coal mines in Pennsylvania. It operates tow-boats and steam barges used in carrying coal to its factories. It owns limestone properties in various places in Pennsylvania and West Virginia. It owns the Monongahela connecting railroad which connects the plants of the Pittsburgh works and forms an interconnection with the Pennsylvania, New York Central, and Baltimore and Ohio Railroad systems. It owns the Aliquippa and Southern Railroad Company which connects the Aliquippa works with the Pittsburgh and Lake Erie, part of the New York Central system. Much of its product is shipped to its warehouses in Chicago, Detroit, Cincinnati, and Memphis—to the last two places by means of its own barges and transportation equipment. In Long Island City, New York, and in New Orleans it operates structural steel fabricating shops in connection with the warehousing of semi-finished materials sent from its works. Through one of its wholly-owned subsidiaries it owns, leases, and operates stores, warehouses, and yards for the distribution of equipment and supplies for drilling and operating oil and gas mills, and for pipe lines, refineries, and pumping stations. It has sales offices in twenty cities in the United States and a wholly-owned subsidiary which is devoted exclusively to distributing its product in Canada. Approximately 75 per cent. of its product is shipped out of Pennsylvania.

Summarizing these operations, the Labor Board concluded that the works in Pittsburgh and Aliquippa "might be likened to the heart of a self-contained, highly integrated body. They draw in the raw materials from Michigan, Minnesota, West Virginia, Pennsylvania in part through arteries and by means controlled by the respondent; they transform the materials and then

pump them out to all parts of the nation through the vast mechanism which the respondent has elaborated."

To carry on the activities of the entire steel industry, 33,000 men mine ore, 44,000 men mine coal, 4,000 men quarry limestone, 16,000 men manufacture coke, 343,000 men manufacture steel, and 83,000 men transport its product. Respondent has about 10,000 employees in its Aliquippa plant, which is located in a community of about 30,000 persons.

Practically all the factual evidence in the case, except that which dealt with the nature of respondent's business, concerned its relations with the employees in the Aliquippa plant whose discharge was the subject of the complaint. These employees were active leaders in the labor union.

While respondent criticizes the evidence and the attitude of the Board, which is described as being hostile toward employers and particularly toward those who insisted upon their constitutional rights, respondent did not take advantage of its opportunity to present evidence to refute that which was offered to show discrimination and coercion. In this situation, the record presents no ground for setting aside the order of the Board so far as the facts pertaining to the circumstances and purpose of the discharge of the employees are concerned. Upon that point it is sufficient to say that the evidence supports the findings of the Board that respondent discharged these men "because of their union activity and for the purpose of discouraging membership in the union." We turn to the questions of law which respondent urges in contesting the validity and application of the Act.

First. The scope of the Act.—The Act is challenged in its entirety as an attempt to regulate all industry, thus invading the reserved powers of the States over their local concerns. It is asserted that the references in the Act to interstate and foreign commerce are colorable at best; that the Act is not a true regulation of such commerce or of matters which directly affect it, but on the contrary has the fundamental object of placing

under the compulsory supervision of the Federal Government all industrial labor relations within the nation. The argument seeks support in the broad words of the preamble and in the sweep of the provisions of the Act, and it is further insisted that its legislative history shows an essential universal purpose in the light of which its scope cannot be limited by either construction or by the application of the separability clause.

If this conception of terms, intent, and consequent inseparability were sound, the Act would necessarily fall by reason of the limitation upon the federal power which inheres in the constitutional grant, as well as because of the explicit reservation of the Tenth Amendment (*Schechter Corporation v. United States*). The authority of the Federal Government may not be pushed to such an extreme as to destroy the distinction, which the commerce clause itself established, between commerce "among the several States" and the internal concerns of a State. That distinction between what is national and what is local in the activities of commerce is vital to the maintenance of our federal system.

But we are not at liberty to deny effect to specific provisions, which Congress has constitutional power to enact, by superimposing upon them inferences from general legislative declarations of an ambiguous character, even if found in the same statute. The cardinal principle of statutory construction is to save and not to destroy. We have repeatedly held that as between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the Act. Even to avoid a serious doubt the rule is the same.

We think it clear that the National Labor Relations Act may be construed so as to operate within the sphere of constitutional authority. The jurisdiction conferred upon the Board, and invoked in this instance, is found in section 10 (a), which provides:

Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce.

The critical words of this provision, prescribing the limits of the Board's authority in dealing with the labor practices, are "affecting commerce." The Act specifically defines the "commerce" to which it refers (sec. 2 (6)):

There can be no question that the commerce thus contemplated by the Act (aside from that within a Territory or the District of Columbia) is interstate and foreign commerce in the constitutional sense. The Act also defines the term "affecting commerce" (sec. 2 (7)):

This definition is one of exclusion as well as inclusion. The grant of authority to the Board does not purport to extend to the relationship between all industrial employers and employees. Its terms do not impose collective bargaining upon all industry regardless of effects upon interstate or foreign commerce. It purports to reach only what may be deemed to burden or obstruct that commerce and, thus qualified, it must be construed as contemplating the exercise of control within constitutional bounds. It is a familiar principle that Acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of the congressional power. Acts having that effect are not rendered immune because they grow out of labor disputes. It is the effect upon commerce, not the source of the injury, which is the criterion. Whether or not particular action does affect commerce in such a close and intimate fashion as to be subject to federal control, and hence to lie within the authority conferred upon the Board, is left by the statute to be determined as individual cases arise. We are thus to inquire whether in the instant case the constitutional boundary has been passed.

Second. The unfair labor practices in question.—The unfair labor practices found by the Board are those defined in section 8, subdivisions (1) and (3). These provide:

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(3) By discrimination in regard to hire or tenure of employ-

ment or any term or condition of employment to encourage or discourage membership in any labor organization. . . .

Section 8, subdivision (1), refers to section 7, which is as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Thus, in its present application, the statute goes no further than to safeguard the right of employees to self-organization and to select representatives of their own choosing for collective bargaining or other mutual protection without restraint or coercion by their employer.

That is a fundamental right. Employees have as clear a right to organize and select their representatives for lawful purposes as the respondent has to organize its business and select its own officers and agents. Discrimination and coercion to prevent the free exercise of the right of employees to self-organization and representation is a proper subject for condemnation by competent legislative authority. Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer (*American Steel Foundries v. Tri-City Central Trades Council*). We reiterated these views when we had under consideration the Railway Labor Act of 1926. Fully recognizing the legality of collective action on the part of employees in order to safeguard their proper interests, we said that Congress was not required to ignore this right but could safeguard it. Congress could seek to make appropriate

collective action of employees an instrument of peace rather than of strife. We said that such collective action would be a mockery if representation were made futile by interference with freedom of choice. Hence the prohibition by Congress of interference with the selection of representatives for the purpose of negotiation and conference between employers and employees, "instead of being an invasion of the constitutional right of either, was based on the recognition of the rights of both." We have reasserted the same principle in sustaining the application of the Railway Labor Act as amended in 1934.

Third. The application of the Act to employees engaged in production.—The principle involved. Respondent says that whatever may be said of employees engaged in interstate commerce, the industrial relations and activities in the manufacturing department of respondent's enterprise are not subject to federal regulation. The argument rests upon the proposition that manufacturing in itself is not commerce.

The Government distinguishes these cases. The various parts of respondent's enterprise are described as interdependent and as thus involving "a great movement of iron ore, coal, and limestone along well-defined paths to the steel mills, thence through them, and thence in the form of steel products into the consuming centers of the country—a definite and well-understood course of business." It is urged that these activities constitute a "stream" or "flow" of commerce, of which the Aliquippa manufacturing plant is the focal point, and that industrial strife at that point would cripple the entire movement. Reference is made to our decision sustaining the Packers and Stockyards Act. The Court found that the stockyards were but a "throat" through which the current of commerce flowed, and the transactions which there occurred could not be separated from that movement.

Respondent contends that the instant case presents material distinctions.

We do not find it necessary to determine whether

these features of defendant's business dispose of the asserted analogy to the "stream of commerce" cases. The congressional authority to protect interstate commerce from burdens and obstructions is not limited to transactions which can be deemed to be an essential part of a "flow" of interstate or foreign commerce. Burdens and obstructions may be due to injurious action springing from other sources. The fundamental principle is that the power to regulate commerce is the power to enact "all appropriate legislation" for "its protection and advancement"; to adopt measures "to promote its growth and insure its safety"; "to foster, protect, control and restrain." That power is plenary and may be exerted to protect interstate commerce "no matter what the source of the dangers which threaten it." Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control. Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that *to embrace them, in view of our complex society,* would effectually obliterate the distinction between what is national and what is local and create a completely centralized government. The question is necessarily one of degree.

That intrastate activities, by reason of close and intimate relation to interstate commerce, may fall within federal control is demonstrated in the case of carriers who are engaged in both interstate and intrastate transportation. There federal control has been found essential to secure the freedom of interstate traffic from interference or unjust discrimination and to promote the efficiency of the interstate service. It is manifest that intrastate rates deal *primarily* with a local activity. But in rate-making they bear such a

close relation to interstate rates that effective control of the one must embrace some control over the other. Under the Transportation Act, 1920, Congress went so far as to authorize the Interstate Commerce Commission to establish a state-wide level of intrastate rates in order to prevent an unjust discrimination against interstate commerce. Other illustrations are found in the broad requirements of the Safety Appliance Act and the Hours of Service Act. It is said that this exercise of federal power has relation to the maintenance of adequate instrumentalities of interstate commerce. But the agency is not superior to the commerce which uses it. The protective power extends to the former because it exists as to the latter.

The close and intimate effect which brings the subject within the reach of federal power may be due to activities in relation to productive industry although the industry when separately viewed is local. This has been abundantly illustrated in the application of the federal Anti-Trust Act.

Upon the same principle, the Anti-Trust Act has been applied to the conduct of employees engaged in production.

It is thus apparent that the fact that the employees here concerned were engaged in production is not determinative. The question remains as to the effect upon interstate commerce of the labor practice involved.

Fourth. Effects of the unfair labor practice in respondent's enterprise.—Giving full weight to respondent's contention with respect to a break in the complete continuity of the "stream of commerce" by reason of respondent's manufacturing operations, the fact remains that the stoppage of those operations by industrial strife would have a most serious effect upon interstate commerce. In view of respondent's far-flung activities, it is idle to say that the effect would be indirect or remote. It is obvious that it would be immediate and might be catastrophic. We are asked to shut our eyes to the plainest facts of our national life and to deal with the question of direct and indirect effects in an intellectual vacuum. Because

there may be but indirect and remote effects upon interstate commerce in connection with a host of local enterprises throughout the country, it does not follow that other industrial activities do not have such a close and intimate relation to interstate commerce as to make the presence of industrial strife a matter of the most urgent national concern. When industries organize themselves on a national scale, making their relation to interstate commerce the dominant factor in their activities, how can it be maintained that their industrial labor relations constitute a forbidden field into which Congress may not enter when it is necessary to protect interstate commerce from the paralyzing consequences of industrial war? We have often said that interstate commerce itself is a practical conception. It is equally true that interferences with that commerce must be appraised by a judgment that does not ignore actual experience.

Experience has abundantly demonstrated that the recognition of the right of employees to self-organization and to have representatives of their own choosing for the purpose of collective bargaining is often an essential condition of industrial peace. Refusal to confer and negotiate has been one of the most prolific causes of strife. This is such an outstanding fact in the history of labor disturbances that it is a proper subject of judicial notice and requires no citation of instances. But with respect to the appropriateness of the recognition of self-organization and representation in the promotion of peace, the question is not essentially different in the case of employees in industries of such a character that interstate commerce is put in jeopardy from the case of employees of transportation companies. And of what avail is it to protect the facility of transportation, if interstate commerce is throttled with respect to the commodities to be transported!

These questions have frequently engaged the attention of Congress and have been the subject of many inquiries. The steel industry is one of the great basic industries of the United States, with ramifying activities affecting interstate commerce at every point. The Government

aply refers to the steel strike of 1919-1920 with its far-reaching consequences. The fact that there appears to have been no major disturbance in that industry in the more recent period did not dispose of the possibilities of future and like dangers to interstate commerce which Congress was entitled to foresee and to exercise its protective power to forestall. It is not necessary again to detail the facts as to respondent's enterprise. Instead of being beyond the pale, we think that it presents in a most striking way the close and intimate relation which a manufacturing industry may have to interstate commerce, and we have no doubt that Congress had constitutional authority to safeguard the right of respondent's employees to self-organization and freedom in the choice of representatives for collective bargaining.

Fifth. The means which the Act employs. Questions under the due process clause and other constitutional restrictions.—Respondent asserts its right to conduct its business in an orderly manner without being subjected to arbitrary restraints. What we have said points to the fallacy in the argument. Employees have their correlative right to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work. Restraint for the purpose of preventing an unjust interference with that right cannot be considered arbitrary or capricious.

The Act does not compel agreements between employers and employees. It does not compel any agreement whatever. It does not prevent the employer "from refusing to make a collective contract and hiring individuals on whatever terms the employer may by unilateral action determine." The Act expressly provides in section 9 (a) that any individual employee or a group of employees shall have the right at any time to present grievances to their employer. The theory of the Act is that free opportunity for negotiation with accredited representatives of employees is likely to promote industrial peace and may bring about the adjustments and agreements which the Act in itself does not attempt to compel. As we said in *Teas & N.O.R. Co.*

230 *N.L.R.B. v. Jones and Laughlin Steel Corporation*, 1937 *v. Railway Clerks*, and repeated in *Virginian Railway Co. v. System Federation*, No. 40, the cases of *Adair v. United States* and *Coppage v. Kansas* are inapplicable to legislation of this character. The Act does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them. The employer may not, under cover of that right, intimidate or coerce its employees with respect to their self-organization and representation, and, on the other hand, the Board is not entitled to make its authority a pretext for interference with the right of discharge when that right is exercised for other reasons than such intimidation and coercion. The true purpose is the subject of investigation with full opportunity to show the facts. It would seem that when employers freely recognize the right of their employees to their own organizations and their unrestricted right of representation there will be much less occasion for controversy in respect to the free and appropriate exercise of the right of selection and discharge.

The Act has been criticised as one-sided in its application; that it fails to provide a more comprehensive plan. But we are dealing with the power of Congress, not with a particular policy or with the extent to which policy should go. We have frequently said that the legislative authority, exerted within its proper field, need not embrace all the evils within its reach. The Constitution does not forbid "cautious advance, step by step," in dealing with the evils which are exhibited in activities within the range of legislative power. The question in such cases is whether the legislature, in what it does prescribe, has gone beyond constitutional limits.

Our conclusion is that the order of the Board was within its competency and that the Act is valid as here applied. The judgment of the Circuit Court of Appeals is reversed and the cause is remanded for further proceedings in conformity with this opinion.

42. WEST COAST HOTEL v. PARRISH

1937

[This case was an important landmark in the history of American labour legislation. The decision in *Adkins v. Children's Hospital* (1929) (see No. 19) had blocked minimum wage legislation for years. This case raised the question of the interpretation of the Fourteenth Amendment, and especially whether such legislation regulating the standard of wages for women and minors might be considered a reasonable exercise of the "police power" of the State. The Court reconsidered its decision in the *Adkins* case and in its opinion showed a new readiness to consider the social implications of the legislation in question.]

HUGHES, C.J. This case presents the question of the constitutional validity of the minimum wage law of the State of Washington.

The Act, entitled "Minimum Wages for Women," authorizes the fixing of minimum wages for women and minors. . . .

The appellant conducts a hotel. The appellee Elsie Parrish was employed as a chambermaid and (with her husband) brought this suit to recover the difference between the wages paid her and the minimum wage fixed pursuant to the State law. The minimum wage was \$14.50 per week of forty-eight hours. The appellant challenged the Act as repugnant to the due process clause of the Fourteenth Amendment of the Constitution of the United States. The Supreme Court of the State, reversing the trial court, sustained the statute and directed judgment for the plaintiffs (*Parrish v. West Coast Hotel Co.*). The case is here on appeal.

The appellant relies upon the decision of this Court in *Adkins v. Children's Hospital*, which held invalid the District of Columbia Minimum Wage Act which was attacked under the due process clause of the Fifth Amendment. . . .

The Supreme Court of Washington has upheld the

minimum wage statute of that State. It has decided that the statute is a reasonable exercise of the police power of the State. In reaching that conclusion the State court has invoked principles long established by this Court in the application of the Fourteenth Amendment. The State court has refused to regard the decision in the *Adkins* case as determinative and has pointed to our decisions both before and since that case as justifying its position. We are of the opinion that this ruling of the State court demands on our part a re-examination of the *Adkins* case. The importance of the question, in which many States having similar laws are concerned, the close division by which the decision in the *Adkins* case was reached, and the economic conditions which have supervened, and in the light of which the reasonableness of the exercise of the protective power of the State must be considered, make it not only appropriate, but we think imperative, that in deciding the present case the subject should receive fresh consideration. . . .

The principle which must control our decision is not in doubt. The constitutional provision invoked is the due process clause of the Fourteenth Amendment governing the States, as the due process clause invoked in the *Adkins* case governed Congress. In each case the violation alleged by those attacking minimum wage regulation for women is deprivation of freedom of contract. What is this freedom? The Constitution does not speak of freedom of contract. It speaks of liberty and prohibits the deprivation of liberty without due process of law. In prohibiting that deprivation the Constitution does not recognize an absolute and uncontrollable liberty. Liberty in each of its phases has its history and connotation. But the liberty safeguarded is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals, and welfare of the people. Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is

adopted in the interests of the community is due process.

This essential limitation of liberty in general governs freedom of contract in particular. More than twenty-five years ago we set forth the applicable principle in these words, after referring to the cases where the liberty guaranteed by the Fourteenth Amendment had been broadly described :

But it was recognized in the cases cited, as in many others, that freedom of contract is a qualified and not an absolute right. There is no absolute freedom to do as one wills or to contract as one chooses. The guaranty of liberty does not withdraw from legislative supervision that wide department of activity which consists of the making of contracts, or deny to government the power to provide restrictive safeguards. Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community (*Chicago, Burlington & Quincy R.R. Co. v. M'Graw*).

This power under the Constitution to restrict freedom of contract has had many illustrations. That it may be exercised in the public interest with respect to contracts between employer and employee is undeniable. . . . In dealing with the relation of employer and employed, the legislature has necessarily a wide field of discretion in order that there may be suitable protection of health and safety, and that peace and good order may be promoted through regulations designed to insure wholesome conditions of work and freedom from oppression.

The point that has been strongly stressed that adult employees should be deemed competent to make their own contracts was decisively met nearly forty years ago in *Holden v. Hardy*, where we pointed out the inequality in the footing of the parties. . . .

It is manifest that this established principle is peculiarly applicable in relation to the employment of women in whose protection the State has a special interest. That phase of the subject received elaborate consideration in *Muller v. Oregon*, where the constitutional

authority of the State to limit the working hours of women was sustained. . . . Again, in *Quong Wing v. Kirkendall*, in referring to a differentiation with respect to the employment of women, we said that the Fourteenth Amendment did not interfere with State power by creating a "fictitious equality." We referred to recognized classifications on the basis of sex with regard to hours of work and in other matters, and we observed that the particular points at which that difference shall be enforced by legislation were largely in the power of the State. . . .

This array of precedents and the principles they applied were thought by the dissenting Justices in the *Adkins* case to demand that the minimum wage statute be sustained. The validity of the distinction made by the Court between a minimum wage and a maximum of hours in limiting liberty of contract was especially challenged. That challenge persists and is without any satisfactory answer. . . .

The minimum wage to be paid under the Washington statute is fixed after full consideration by representatives of employers, employees, and the public. It may be assumed that the minimum wage is fixed in consideration of the services that are performed in the particular occupations under normal conditions. Provision is made for special licenses at less wages in the case of women who are incapable of full service. The statement of Mr Justice Holmes in the *Adkins* case is pertinent:

This statute does not compel anybody to pay anything. It simply forbids employment at rates below those fixed as the minimum requirement of health and right living. It is safe to assume that women will not be employed at even the lowest wages allowed unless they earn them, or, unless the employer's business can sustain the burden. In short, the law in its character and operation is like hundreds of so-called police laws that have been upheld.

And Chief Justice Taft forcibly pointed out the consideration which is basic in a statute of this character:

Legislatures which adopt a requirement of maximum hours or minimum wages may be presumed to believe that when sweating employers are prevented from paying unduly low wages by positive law they will continue their business, abating that part of their profits, which were wrung from the necessities of their employees, and will concede the better terms required by the law; and that while in individual cases hardship may result, the restriction will enure to the benefit of the general class of employees in whose interest the law is passed and so to that of the community at large.

We think that the views thus expressed are sound and that the decision in the *Adkins* case was a departure from the true application of the principles governing the regulation by the State of the relation of employer and employed. Those principles have been re-enforced by our subsequent decisions. . . .

With full recognition of the earnestness and vigor which characterize the prevailing opinion in the *Adkins* case, we find it impossible to reconcile that ruling with these well-considered declarations. What can be closer to the public interest than the health of women and their protection from unscrupulous and overreaching employers? And if the protection of women is a legitimate end of the exercise of State power, how can it be said that the requirement of the payment of a minimum wage fairly fixed in order to meet the very necessities of existence is not an admissible means to that end? The legislature of the State was clearly entitled to consider the situation of women in employment, the fact that they are in the class receiving the least pay, that their bargaining power is relatively weak, and that they are the ready victims of those who would take advantage of their necessitous circumstances. The legislature was entitled to adopt measures to reduce the evils of the "sweating system," the exploiting of workers at wages so low as to be insufficient to meet the bare cost of living, thus making their very helplessness the occasion of a most injurious competition. The legislature had the right to consider that its minimum wage requirements would be an important aid in carrying out its

policy of protection. The adoption of similar requirements by many States evidences a deep-seated conviction both as to the presence of the evil and as to the means adapted to check it. Legislative response to that conviction cannot be regarded as arbitrary or capricious and that is all we have to decide. Even if the wisdom of the policy be regarded as debatable and its effects uncertain, still the legislature is entitled to its judgment.

There is an additional and compelling consideration which recent economic experience has brought into a strong light. The exploitation of a class of workers who are in an unequal position with respect to bargaining power and are thus relatively defenceless against the denial of a living wage is not only detrimental to their health and well-being, but casts a direct burden for their support upon the community. What these workers lose in wages the taxpayers are called upon to pay. The bare cost of living must be met. We may take judicial notice of the unparalleled demands for relief which arose during the recent period of depression and still continue to an alarming extent despite the degree of economic recovery which has been achieved. It is unnecessary to cite official statistics to establish what is of common knowledge through the length and breadth of the land. While in the instant case no factual brief has been presented, there is no reason to doubt that the State of Washington has encountered the same social problem that is present elsewhere. The community is not bound to provide what is in effect a subsidy for unconscionable employers. The community may direct its law-making power to correct the abuse which springs from their selfish disregard of the public interest. The argument that the legislation in question constitutes an arbitrary discrimination, because it does not extend to men, is unavailing. This Court has frequently held that the legislative authority, acting within its proper field, is not bound to extend its regulation to all cases which it might possibly reach. The legislature "is free to recognize degrees of harm and it may confine its restrictions to those classes of cases where the need is

deemed to be clearest." If "the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied." There is no "doctrinaire requirement" that the legislation should be couched in all embracing terms. This familiar principle has repeatedly been applied to legislation which singles out women, and particular classes of women, in the exercise of the State's protective power. Their relative need in the presence of the evil, no less than the existence of the evil itself, is a matter for the legislative judgment.

Our conclusion is that the case of *Adkins v. Children's Hospital* should be, and it is, overruled. The judgment of the Supreme Court of the State of Washington is affirmed.

43. THE SOCIAL SECURITY ACT CASES, 1937

[On 24 May 1937 the Supreme Court gave judgment on a number of cases arising out of the Social Security Act of 1935 (No. 35). The upholding of the Act was a critical victory for the New Deal. But almost more important was the change in the attitude of the Court towards the question of the rights of Congress to "provide for the general Welfare of the United States" (The Constitution, Article I, section 8). Its support for the Act added immensely to the power of the Federal Government. Its readiness to bear in mind the economic conditions of the time, when considering the problem of "general welfare," showed that it was prepared to recognize, in President Roosevelt's words, "modern facts and circumstances under which average men have to live and work."

The two most important cases were *Steward Machine Company v. Davis* and *Hefner et al. v. Davis*.

The case of *Steward Machine Company v. Davis* arose out of a claim by an Alabama Corporation for a refund of taxes paid under the Social Security Act. The constitutional validity of the "payroll" tax on employers of eight or more

men for the provision of Unemployment Insurance Benefits was questioned on various grounds, of which the most important were these, that the Act was a breach of the Fifth Amendment, that it gave to Congress powers reserved to the States under the Tenth Amendment, and that the States in submitting to it had abandoned, under coercion, functions which they were not permitted to surrender. The most telling sentence in the judgment was that which declared, "It is too late to-day for the argument to be heard with tolerance that in a crisis so extreme the use of the moneys of the nation to relieve the unemployed and their dependents is a use for any purpose narrower than the promotion of general welfare."

The case of *Helvering et al. v. Davis* dealt with the question of old age pensions. In affirming the validity of the relevant provisions of the Act, the Court went further than ever before in its interpretation of the term "general welfare." "The problem," it was declared, referring to the needs of retired workers, "is plainly national in areas and dimensions. Moreover, laws of the separate States cannot deal with it effectively."]

(a) *Steward Machine Co. v. Davis.*

CARDOZO, J. The validity of the tax imposed by the Social Security Act on employers of eight or more is here to be determined. . . .

The assault on the statute proceeds on an extended front. Its assailants take the ground that the tax is not an excise; that it is not uniform throughout the United States as excises are required to be; that its exceptions are so many and arbitrary as to violate the Fifth Amendment; that its purpose was not revenue, but an unlawful invasion of the reserved powers of the States; and that the States in submitting to it have yielded to coercion and have abandoned governmental functions which they are not permitted to surrender.

The objections will be considered *seriatim* with such further explanation as may be necessary to make their meaning clear.

First: The tax, which is described in the statute as an excise, is laid with uniformity throughout the United

States as a duty, an impost or an excise upon the relation of employment.

1. We are told that the relation of employment is one so essential to the pursuit of happiness that it may not be burdened with a tax. Appeal is made to history. From the precedents of colonial days we are supplied with illustrations of excises common in the colonies. They are said to have been bound up with the enjoyment of particular commodities. Appeal is also made to principle or the analysis of concepts. An excise, we are told, imports a tax upon a privilege; employment, it is said, is a right, not a privilege, from which it follows that employment is not subject to an excise. Neither the one appeal nor the other leads to the desired goal. . . .

The historical prop failing, the prop or lanted prop of principle remains. We learn that employment for lawful gain is a "natural" or "inherent" or "inalienable" right, and not a "privilege" at all. But natural rights, so called, are as much subject to taxation as rights of less importance. An excise is not limited to vocations or activities that may be prohibited altogether. It is not limited to those that are the outcome of a franchise. It extends to vocations or activities pursued as of common right. What the individual does in the operation of a business is amenable to taxation just as much as what he owns, at all events if the classification is not tyrannical or arbitrary. "Business is as legitimate an object of the taxing powers as property" (*City of Newton v. Atchison* (per Brewer, J.)). Indeed, ownership itself, as we had occasion to point out the other day, is only a bundle of rights and privileges invested with a single name (*Henneford v. Silas Mason Co., Inc.*). "A state is at liberty, if it pleases, to tax them all collectively, or to separate the faggots and lay the charge distributively." Employment is a business relation, if not itself a business. It is a relation without which business could seldom be carried on effectively. The power to tax the activities and relations that constitute a calling considered as a unit is the power to tax any of them. The whole includes the parts.

The subject-matter of taxation open to the power of the Congress is as comprehensive as that open to the power of the States, though the method of apportionment may at times be different. "The Congress shall have power to lay and collect taxes, duties, imposts, and excises" (Art. 1, section 8). If the tax is a direct one, it shall be apportioned according to the census or enumeration. If it is a duty, impost, or excise, it shall be uniform throughout the United States. Together, these classes include every form of tax appropriate to sovereignty. Whether the tax is to be classified as an "excise" is in truth not of critical importance. If not that, it is an "impost" or a "duty". A capitation or other "direct" tax it certainly is not. "Although there have been from time to time intimations that there might be some tax which was not a direct tax nor included under the words 'duties, imposts, and excises,' such a tax for more than one hundred years of national existence has as yet remained undiscovered, notwithstanding the stress of particular circumstances has invited thorough investigation into sources of powers" (*Pollock v. Farmers' Loan and Trust Co.*). There is no departure from that thought in later cases, but rather a new emphasis of it. Thus, in *Thomas v. United States* it was said of the words "duties, imposts, and excises" that "they were used comprehensively to cover customs and excise duties imposed on importation, consumption, manufacture, and sale of certain commodities, privileges, particular business transactions, vocations, occupations, and the like." At times taxpayers have contended that the Congress is without power to lay an excise on the enjoyment of a privilege created by State law. The contention has been put aside as baseless. Congress may tax the transmission of property by inheritance or will, though the States and not Congress have created the privilege of succession. Congress may tax the enjoyment of a corporate franchise, though a State and not Congress has brought the franchise into being. The statute books of the States are strewn with illustrations of taxes laid on occupations pursued of common right.

We find no basis for a holding that the power in that regard which belongs by accepted practice to the legislatures of the States, has been denied by the Constitution to the Congress of the nation.

2. The tax being an excise, its imposition must conform to the canon of uniformity. There has been no departure from this requirement. According to the settled doctrine the uniformity exacted is geographical, not intrinsic. . . .

Second: The excise is not invalid under the provisions of the Fifth Amendment by force of its exemptions.

The statute does not apply, as we have seen, to employers of less than eight. It does not apply to agricultural labor, or domestic service in a private home or to some other classes of less importance. Petitioner contends that the effect of these restrictions is an arbitrary discrimination vitiating the tax.

The Fifth Amendment unlike the Fourteenth has no equal protection clause. . . . But even the States, though subject to such a clause, are not confined to a formula of rigid uniformity in framing measures of taxation. . . . They may tax some kinds of property at one rate, and others at another, and exempt others altogether. . . . They may lay an excise on the operations of a particular kind of business, and exempt some other kind of business closely akin thereto. . . . If this latitude of judgment is lawful for the States, it is lawful, *a fortiori*, in legislation by the Congress, which is subject to restraints less narrow and confining. . . .

The classifications and exemptions directed by the statute now in controversy have support in considerations of policy and practical convenience that cannot be condemned as arbitrary. The classifications and exemptions would therefore be upheld if they had been adopted by a State and the provisions of the Fourteenth Amendment were invoked to annul them. This is held in two cases passed upon to-day in which precisely the same provisions were the subject of attack, the provisions being contained in the Unemployment Compensation Law of the State of Alabama. . . . It would

be useless to repeat the argument. The Act of Congress is therefore valid, so far at least as its system of exemptions is concerned, and this though we assume that discrimination, if gross enough, is equivalent to confiscation and subject under the Fifth Amendment to challenge and annulment.

Third: The excise is not void as involving the coercion of the States in contravention of the Tenth Amendment or of restrictions implicit in our federal form of government.

The proceeds of the excise when collected are paid into the Treasury at Washington, and therefore are subject to appropriation like public moneys generally. No presumption can be indulged that they will be misapplied or wasted. Even if they were collected in the hope or expectation that some other and collateral good would be furthered as an incident, that without more would not make the Act invalid. This indeed is hardly questioned. The case for the petitioner is built on the contention that here an ulterior aim is wrought into the very structure of the Act, and what is even more important that the aim is not only ulterior, but essentially unlawful. In particular, the 90 per cent. credit is relied upon as supporting that conclusion. But before the statute succumbs to an assault upon these lines, two propositions must be made out by the assailant. There must be a showing in the first place that separated from the credit the revenue provisions are incapable of standing by themselves. There must be a showing in the second place that the tax and the credit in combination are weapons of coercion, destroying or impairing the autonomy of the States. The truth of each proposition being essential to the success of the assault, we pass for convenience to a consideration of the second, without pausing to inquire whether there has been a demonstration of the first. *

To draw the line intelligently between duress and inducement there is need to remind ourselves of facts as to the problem of unemployment that are now matters of common knowledge. . . . The fact developed

quickly that the States were unable to give the requisite relief. The problem had become national in area and dimensions. There was need of help from the nation if the people were not to starve. It is too late to-day for the argument to be heard with tolerance that in a crisis so extreme the use of the moneys of the nation to relieve the unemployed and their dependents is a use for any purpose narrower than the promotion of the general welfare. The nation responded to the call of the distressed. Between 1 January 1933 and 1 July 1936 the States (according to statistics submitted by the Government) incurred obligations of \$689,291,802 for emergency relief; local subdivisions an additional \$775,675,366. In the same period the obligations for emergency relief incurred by the National Government were \$2,929,307,125, or twice the obligations of States and local agencies combined. According to the President's budget message for the fiscal year 1938, the National Government expended for public works and unemployment relief for the three fiscal years 1934, 1935, and 1936, the stupendous total of \$8,681,000,000. The *parens patriae* has many reasons—fiscal and economic as well as social and moral—for planning to mitigate disasters that bring these burdens in their train.

In the presence of this urgent need for some remedial expedient, the question is to be answered whether the expedient adopted has overlept the bounds of power. The assailants of the statute say that its dominant end and aim is to drive the State legislatures under the whip of economic pressure into the enactment of unemployment compensation laws at the bidding of the central government. Supporters of the statute say that its operation is not constraint, but the creation of a larger freedom, the States and the nation joining in a co-operative endeavor to avert a common evil. Before Congress acted, unemployment compensation insurance was still, for the most part, a project and no more. Wisconsin was the pioneer. Her statute was adopted in 1931. At times bills for such insurance were introduced elsewhere, but they did not reach the stage of

law. In 1935 four States (California, Massachusetts, New Hampshire, and New York) passed unemployment laws on the eve of the adoption of the Social Security Act, and two others did likewise after the federal Act and later in the year. The statutes differed to some extent in type, but were directed to a common end. In 1936, twenty-eight other States fell in line, and eight more the present year. But if States had been holding back before the passage of the federal law, inaction was not owing, for the most part, to the lack of sympathetic interest. Many held back through alarm lest in laying such a toll upon their industries they would place themselves in a position of economic disadvantage as compared with neighbors or competitors. Two consequences ensued. One was that the freedom of a State to contribute its fair share to the solution of a national problem was paralysed by fear. The other was that in so far as there was failure by the States to contribute relief according to the measure of their capacity, a disproportionate burden, and a mountainous one, was laid upon the resources of the Government of the nation.

The Social Security Act is an attempt to find a method by which all these public agencies may work together to a common end. Every dollar of the new taxes will continue in all likelihood to be used and needed by the nation as long as States are unwilling, whether through timidity or for other motives, to do what can be done at home. At least the inference is permissible that Congress so believed, though retaining undiminished freedom to spend the money as it pleased. On the other hand, fulfilment of the home duty will be lightened and encouraged by crediting the taxpayer upon his account with the Treasury of the nation to the extent that his contributions under the laws of the locality have simplified or diminished the problem of relief and the probable demand upon the resources of the fisc. Duplicated taxes, or burdens that approach them, are recognised hardships that Government, state or national, may properly avoid. If Congress

believed that the general welfare would better be promoted by relief through local units than by the system then in vogue, the co-operating localities ought not in all fairness to pay a second time.

Who then is coerced through the operation of this statute? Not the taxpayer. He pays in fulfilment of the mandate of the local legislature. Not the State. Even now she does not offer a suggestion that in passing the unemployment law she was affected by duress. . . . For all that appears she is satisfied with her choice, and would be sorely disappointed if it were now to be annulled. The difficulty with the petitioner's contention is that it confuses motive with coercion. "Every tax is in some measure regulatory. To some extent it interposes an economic impediment to the activity taxed as compared with others not taxed" (*Sonzinsky v. United States*). In like manner every rebate from a tax when conditioned upon conduct is in some measure a temptation. But to hold that motive or temptation is equivalent to coercion is to plunge the law in endless difficulties. The outcome of such a doctrine is the acceptance of a philosophical determinism by which choice becomes impossible. Till now the law has been guided by a robust common sense which assumes the freedom of the will as a working hypothesis in the solution of its problems. The wisdom of the hypothesis has illustration in this case. Nothing in the case suggests the exertion of a power akin to undue influence, if we assume that such a concept can ever be applied with fitness to the relations between State and nation. Even on that assumption the location of the point at which pressure turns into compulsion, and ceases to be inducement, would be a question of degree—at times, perhaps, of fact. The point had not been reached when Alabama made her choice. We cannot say that she was acting, not of her unfettered will, but under the strain of a persuasion equivalent to undue influence, when she chose to have relief administered under laws of her own making, by agents of her own selection, instead of under federal laws, administered by federal officers, with all the

ensuing evils, at least to many minds, of federal patronage and power. There would be a strange irony, indeed, if her choice were now to be annulled on the basis of an assumed duress in the enactment of a statute which her courts have accepted as a true expression of her will. . . . We think the choice must stand. . . .

Fourth: The statute does not call for a surrender by the States of powers essential to their quasi-sovereign existence.

Argument to the contrary has its source in two sections of the Act. One section (903) defines the minimum criteria to which a State compensation system is required to conform if it is to be accepted by the Board as the basis for a credit. The other section (904) rounds out the requirement with complementary rights and duties. Not all the criteria or their incidents are challenged as unlawful. We will speak of them first generally, and then more specifically in so far as they are questioned. . . . What they may not do, if they would earn the credit, is to depart from those standards which in the judgment of Congress are to be ranked as fundamental.

Even if opinion may differ as to the fundamental quality of one or more of the conditions, the difference will not avail to vitiate the statute. In determining essentials Congress must have the benefit of a fair margin of discretion. One cannot say with reason that this margin has been exceeded, or that the basic standards have been determined in any arbitrary fashion. In the event that some particular condition shall be found to be too uncertain to be capable of enforcement, it may be severed from the others, and what is left will still be valid.

We are to keep in mind steadily that the conditions to be approved by the Board as the basis for a credit are not provisions of a contract, but terms of a statute, which may be altered or repealed (section 903 (d) (6)). The State does not bind itself to keep the law in force. It does not even bind itself that the moneys paid into the federal fund will be kept there indefinitely or for any stated time. On the contrary, the Secretary of

the Treasury will honor a requisition for the whole or any part of the deposit in the fund whenever one is made by the appropriate officials. The only consequence of the repeal or excessive amendment of the statute, or the expenditure of the money, when requisitioned, for other than compensation uses or administrative expenses, is that approval of the law will end, and with it the allowance of a credit, upon notice to the State agency and an opportunity for hearing (section 903 (b) (c)).

These basic considerations are in truth a solvent of the problem. Subjected to their test, the several objections on the score of abdication are found to be unreal. . . .

There is argument again that the moneys when withdrawn are to be devoted to specific uses, the relief of unemployment, and that by agreement for such payment the quasi-sovereign position of the State has been impaired, if not abandoned. But again there is confusion between promise and condition. Alabama is still free, without breach of an agreement, to change her system overnight. No officer or agency of the National Government can force a compensation law upon her or keep it in existence. No officer or agency of that Government, either by suit or other means, can supervise or control the application of the payments.

Finally and chiefly, abdication is supposed to follow from section 904 of the statute and the parts of section 903 that are complementary thereto (section 903 (a) (3)). By these the Secretary of the Treasury is authorized and directed to receive and hold in the Unemployment Trust Fund all moneys deposited therein by a State agency for a State unemployment fund and to invest in obligations of the United States such portion of the fund as is not in his judgment required to meet current withdrawals. We are told that Alabama in consenting to that deposit has renounced the plenitude of power inherent in her Statehood.

The same pervasive misconception is in evidence again. All that the State has done is to say in effect through the enactment of a statute that her agents shall

be authorized to deposit the unemployment tax receipts in the Treasury at Washington (Alabama Unemployment Act of 14 September 1935, section 10 (i)). The statute may be repealed (section 903 (a) (6)). The consent may be revoked. The deposits may be withdrawn. The moment the State commission gives notice to the depository that it would like the moneys back, the Treasurer will return them. To find State destruction there is to find it almost anywhere. With nearly as much reason one might say that a State abdicates its functions when it places the State moneys on deposit in a national bank.

There are very good reasons of fiscal and governmental policy why a State should be willing to make the Secretary of the Treasury the custodian of the fund. His possession of the moneys and his control of investments will be an assurance of stability and safety in times of stress and strain. A report of the Ways and Means Committee of the House of Representatives, quoted in the margin, develops the situation clearly. Nor is there risk of loss or waste. The credit of the Treasury is at all times back of the deposit, with the result that the right of withdrawal will be unaffected by the fate of any intermediate investments, just as if a checking account in the usual form had been opened in a bank.

The inference of abdication thus dissolves in thinnest air when the deposit is conceived of as dependent upon a statutory consent, and not upon a contract effective to create a duty. By this we do not intimate that the conclusion would be different if a contract were discovered. Even sovereigns may contract without derogating from their sovereignty. . . . The States are at liberty, upon obtaining the consent of Congress, to make agreements with one another (Constitution, Art. I, section 10, par. 3). . . . We find no room for doubt that they may do the like with Congress if the essence of their Statehood is maintained without impairment. Alabama is seeking and obtaining a credit of many millions in favor of her citizens out of the

Treasury of the nation. Nowhere in our scheme of government—in the limitations, express or implied, of our federal constitution—do we find that she is prohibited from assenting to conditions that will assure a fair and just requital for benefits received. But we will not labor the point further. An unreal prohibition directed to an unreal agreement will not vitiate an Act of Congress, and cause it to collapse in ruin. . . .

The judgment is affirmed.

(b) *Helvering et al. v. Davis.*

CARDOZO, J. The Social Security Act is challenged once again. In *Steward Machine Co. v. Davis*, decided this day, we have upheld the validity of Title IX of the Act, imposing an excise upon employers of eight or more.

In this case Titles VIII and II are the subject of attack. . . .

Second: The scheme of benefits created by the provisions of Title II is not in contravention of the limitations of the Tenth Amendment.

Congress may spend money in aid of the "general welfare" (Constitution, Art. I, section 8; *United States v. Butler*; *Steward Machine Co. v. Davis*). There have been great statesmen in our history who have stood for other views. We will not resurrect the contest. It is now settled by decision (*United States v. Butler*). The conception of the spending power advocated by Hamilton and strongly reinforced by Story has prevailed over that of Madison, which has not been lacking in adherents. Yet difficulties are left when the power is conceded. The line must still be drawn between one welfare and another, between particular and general. Where this shall be placed cannot be known through a formula in advance of the event. There is a middle ground or certainly a penumbra in which discretion is at large. The discretion, however, is not confided to the courts. The discretion belongs to Congress, unless the choice is clearly wrong, a display of arbitrary power, not an exercise of judgment. This is now familiar law. "When such a contention comes here we naturally

require a showing that by no reasonable possibility can the challenged legislation fall within the wide range of discretion permitted to the Congress" (*United States v. Butler*). Nor is the concept of the general welfare static. Needs that were narrow or parochial a century ago may be interwoven in our day with the well-being of the nation. What is critical or urgent changes with the times.

The purge of nation-wide calamity that began in 1929 has taught us many lessons. Not the least is the solidarity of interests that may once have seemed to be divided. Unemployment spreads from State to State, the hinterland now settled that in pioneer days gave an avenue of escape. Spreading from State to State, unemployment is an ill not particular but general, which may be checked, if Congress so determines, by the resources of the nation. If this can have been doubtful until now, our ruling to-day in the case of the *Steward Machine Co.* has set the doubt at rest. But the ill is all one or at least not greatly different whether men are thrown out of work because there is no longer work to do or because the disabilities of age make them incapable of doing it. Rescue becomes necessary irrespective of the cause. The hope behind this statute is to save men and women from the rigors of the poor-house, as well as from the haunting fear that such a lot awaits them when journey's end is near.

Congress did not improvise a judgment when it found that the award of old age benefits would be conducive to the general welfare. The President's Committee on Economic Security made an investigation and report, aided by a research staff of Government officers and employees, and by an Advisory Council and seven other advisory groups. Extensive hearings followed before the House Committee on Ways and Means, and the Senate Committee on Finance. A great mass of evidence was brought together supporting the policy which finds expression in the Act. Among the relevant facts are these: The number of persons in the United States 65 years of age or over is increasing

proportionately as well as absolutely. What is even more important, the number of such persons unable to take care of themselves is growing at a threatening pace. More and more our population is becoming urban and industrial instead of rural and agricultural. The evidence is impressive that among industrial workers the younger men and women are preferred over the older. In time of retrenchment the older are commonly the first to go, and even if retained, their wages are likely to be lowered. The plight of men and women at so low an age as 40 is hard, almost hopeless, when they are driven to seek for re-employment. Statistics are in the brief. A few illustrations will be chosen from many there collected. In 1930, out of 224 American factories investigated, 71, or almost one-third, had fixed maximum hiring age limits; in 4 plants the limit was under 40; in 41 it was under 46. In the other 153 plants there were no fixed limits, but in practice few were hired if they were over 30 years of age. With the loss of savings inevitable in periods of idleness, the fate of workers over 65, when thrown out of work, is little less than desperate. A recent study of the Social Security Board informs us that "one-fifth of the aged in the United States were receiving old age assistance, emergency relief, institutional care, employment under the works program, or some other form of aid from public or private funds; two-fifths to one-half were dependent on friends and relatives, one-eighth had some income from earnings; and possibly one-sixth had some savings or property. Approximately three out of four persons 65 or over were probably dependent wholly or partially on others for support." We summarize in the margin the results of other studies by State and national commissions. They point the same way.

The problem is plainly national in area and dimensions. Moreover, laws of the separate States cannot deal with it effectively. Congress, at least, had a basis for that belief. States and local governments are often lacking in the resources that are necessary to finance

an adequate program of security for the aged. This is brought out with a wealth of illustration in recent studies of the problem. Apart from the failure of resources, States and local governments are at time reluctant to increase so heavily the burden of taxation to be borne by their residents for fear of placing themselves in a position of economic disadvantage as compared with neighbors or competitors. We have seen this in our study of the problem of unemployment compensation (*Steward Machine Co. v. Davis*). A system of old age pensions has special dangers of its own, if put in force in one State and rejected in another. The existence of such a system is a bait to the needy and dependent elsewhere, encouraging them to migrate and seek a haven of repose. Only a power that is national can serve the interests of all.

Whether wisdom or unwisdom resides in the scheme of benefits set forth in Title II, it is not for us to say. The answer to such inquiries must come from Congress, not the courts. Our concern here as often is with power, not with wisdom. Counsel for respondent has recalled to us the virtues of self-reliance and frugality. There is a possibility, he says, that aid from a paternal government may sap those sturdy virtues and breed a race of weaklings. If Massachusetts so believes and shapes her laws in that conviction, must her breed of sons be changed, he asks, because some other philosophy of government finds favour in the halls of Congress? But the answer is not doubtful. One might ask with equal reason whether the system of protective tariffs is to be set aside at will in one State or another whenever local policy prefers the rule of *laissez-faire*. The issue is a closed one. It was fought out long ago. When money is spent to promote the general welfare, the concept of welfare or the opposite is shaped by Congress, not the States. So the concept be not arbitrary, the locality must yield (Constitution, Art. VI, par. 2). . . .

Ordered accordingly.

44. THE WAGNER HOUSING ACT

1 SEPTEMBER 1937

[Theodore Roosevelt, when Governor of New York, was, perhaps, the first American statesman of the first rank to take up the question of housing reform, and during his period of office New York began seriously to deal with the problem. But few other States followed its example. In 1933, under the National Recovery Act, the Housing Division of the Public Works Administration had begun to advance loans on generous terms to municipalities or corporations paying limited dividends for housing schemes. But in the course of a year only seven loans had been granted and the Government began instead to purchase land in certain cities and plan the construction there of model low-rented dwellings.

The Wagner Housing Act, which became Law on 1 September 1937, set up a United States Housing Authority, which was empowered to expend federal funds to promote the construction of low-rented houses and the clearance of slums. This aid was to be proffered to "public house agencies" set up by the States, and within a year over thirty States had passed housing laws in conformity with federal legislation and had established the necessary housing authorities.

It is too soon yet to say how far this bold measure will be successful in solving one of the most stubborn problems of modern industrial civilisation.]

An Act to provide financial assistance to the States and political subdivisions thereof for the elimination of unsafe and insanitary housing conditions, for the eradication of slums, for the provision of decent, safe, and sanitary dwellings for families of low income, and for the reduction of unemployment and the stimulation of business activity, to create a United States Housing Authority, and for other purposes.

Declaration of Policy.

SEC. 1. It is hereby declared to be the policy of the United States to promote the general welfare of the

nation by employing its funds and credit, as provided in this Act, to assist the several States and their political subdivisions to alleviate present and recurring unemployment and to remedy the unsafe and insanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income, in rural or urban communities, that are injurious to the health, safety, and morals of the citizens of the nation.

Definitions.

SEC. 2. When used in this Act—

(1) The term "low-rent housing" means decent, safe, and sanitary dwellings within the financial reach of families of low income, and developed and administered to promote serviceability, efficiency, economy, and stability, and embraces all necessary appurtenances thereto. The dwellings in low-rent housing as defined in this Act shall be available solely for families whose net income at the time of admission does not exceed five times the rental (including the value or cost to them of heat, light, water, and cooking fuel) of the dwellings to be furnished such families, except that in the case of families with three or more minor dependents, such ratio shall not exceed six to one.

(2) The term "families of low income" means families who are in the lowest income group and who cannot afford to pay enough to cause private enterprise in their locality or metropolitan area to build an adequate supply of decent, safe, and sanitary dwellings for their use.

(3) The term "slum" means any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health, or morals. . . .

United States Housing Authority.

SEC. 3. (a) There is hereby created in the Department of the Interior and under the general supervision

of the Secretary thereof a body corporate of perpetual duration to be known as the United States Housing Authority, which shall be an agency and instrumentality of the United States.

(b) The powers of the Authority shall be vested in and exercised by an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall serve for a term of five years and shall be removable by the President upon notice and hearing for neglect of duty or malfeasance but for no other cause. . . .

Loans for Low-Rent-Housing and Slum-Clearance Projects.

SEC. 9. The Authority may make loans to public housing agencies to assist the development, acquisition, or administration of low-rent-housing or slum-clearance projects by such agencies. Where capital grants are made pursuant to section 11 the total amount of such loans outstanding on any one project and in which the Authority participates shall not exceed the development or acquisition cost of such project less all such capital grants, but in no event shall said loans exceed 90 per centum of such cost. In the case of annual contributions in assistance of low rentals as provided in section 10 the total of such loans outstanding on any one project and in which the Authority participates shall not exceed 90 per centum of the development or acquisition cost of such project. Such loans shall bear interest at such rate not less than the going Federal rate at the time the loan is made, plus one-half of one per centum, shall be secured in such manner, and shall be repaid within such period not exceeding sixty years, as may be deemed advisable by the Authority.

Annual Contributions in Assistance of Low Rentals.

SEC. 10. (a) The Authority may make annual contributions to public housing agencies to assist in achieving and maintaining the low-rent character of their housing projects. The annual contributions for any

such project shall be fixed in uniform amounts, and shall be paid in such amounts over a fixed period of years. No part of such annual contributions by the Authority shall be made available for any project unless and until the State, city, county, or other political subdivision in which such project is situated shall contribute, in the form of cash or tax remissions, general or special, or tax exemptions, at least 20 per centum of the annual contributions herein provided. The Authority shall embody the provisions for such annual contributions in a contract guaranteeing their payment over such fixed period: *Provided*, That no annual contributions shall be made, and the Authority shall enter into no contract guaranteeing any annual contribution in connection with the development of any low-rent-housing or slum-clearance project involving the construction of new dwellings, unless the project includes the elimination by demolition, condemnation, and effective closing, or the compulsory repair or improvement of unsafe or insanitary dwellings situated in the locality or metropolitan area, substantially equal in number to the number of newly constructed dwellings provided by the project; except that such elimination may, in the discretion of the Authority, be deferred in any locality or metropolitan area where the shortage of decent, safe, or sanitary housing available to families of low income is so acute as to force dangerous overcrowding of such families.

(b) Annual contributions shall be strictly limited to the amounts and periods necessary, in the determination of the Authority, to assure the low-rent character of the housing projects involved. Toward this end the Authority may prescribe regulations fixing the maximum contributions available under different circumstances, giving consideration to cost, location, size, rent-paying ability of prospective tenants, or other factors bearing upon the amounts and periods of assistance needed to achieve and maintain low rentals. Such regulations may provide for rates of contribution based upon development, acquisition or administra-

tion cost, number of dwelling units, number of persons housed, or other appropriate factors. . . .

Capital Grants in Assistance of Low Rentals.

SEC. 11. (a) As an alternative method of assistance to that provided in section 10, when any public housing agency so requests and demonstrates to the satisfaction of the Authority that such alternative method is better suited to the purpose of achieving and maintaining low rentals and to the other purposes of this Act, capital grants may be made to such agency for such purposes. . . .

(b) Pursuant to subsection (a) of this section, the Authority may make a capital grant for any low-rent-housing or slum-clearance project, which shall in no case exceed 25 per centum of its development or acquisition cost. . . .

(d) The Authority is authorized, on or after the date of the enactment of this Act, to make capital grants (pursuant to subsection (b) of this section) aggregating not more than \$10,000,000, on or after 1 July 1938 to make additional capital grants aggregating not more than \$10,000,000, and on or after 1 July 1939 to make additional capital grants aggregating not more than \$10,000,000. Without further authorization from Congress, no capital grants beyond those herein authorized shall be made by the Authority.

(e) To supplement any capital grant made by the Authority in connection with the development of any low-rent-housing or slum-clearance project, the President may allocate to the Authority, from any funds available for the relief of unemployment, an additional capital grant to be expended for payment of labor used in such development: *Provided*, That such additional capital grant shall not exceed 15 per centum of the development cost of the low-rent-housing or slum-clearance project involved.

(f) No capital grant pursuant to this section shall be made for any low-rent-housing or slum-clearance project unless the public housing agency receiving such capital grant shall also receive, from the State, political subdivision thereof, or otherwise, a contribution for

such project (in the form of cash, land, or the value, capitalized at the going Federal rate of interest, of community facilities or services for which a charge, is usually made, or tax remissions or tax exemptions) in an amount not less than 20 per centum of its development or acquisition cost. . . .

Financial Provisions.

SEC. 17. The Authority shall have a capital stock of \$1,000,000, which shall be subscribed by the United States and paid by the Secretary of the Treasury out of any available funds. . . .

SEC. 20. (a) The Authority is authorized to issue obligations, in the form of notes, bonds, or otherwise, which it may sell to obtain funds for the purposes of this Act. The Authority may issue such obligations in an amount not to exceed \$100,000,000 on or after the date of enactment of this Act, an additional amount not to exceed \$200,000,000 on or after 1 July 1938, and an additional amount not to exceed \$200,000,000 on or after 1 July 1939. Such obligations shall . . . bear such rates of interest not exceeding 4 per centum per annum.

(b) Such obligations shall be exempt, both as to principal and interest, from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or by any State, county, municipality, or local taxing authority.

(c) Such obligations shall be fully and unconditionally guaranteed upon their face by the United States as to the payment of both interest and principal, and, in the event that the Authority shall be unable to make any such payment upon demand when due, payments shall be made to the holder by the Secretary of the Treasury with money hereby authorized to be appropriated for such purpose out of any money in the Treasury not otherwise appropriated.

SEC. 21. . . .

(d) Not more than 10 per centum of the funds provided for in this Act, either in the form of a loan, grant, or annual contribution, shall be expended within any one State.

45. PRESIDENT ROOSEVELT'S SPEECH AT QUEEN'S UNIVERSITY, KINGSTON

18 AUGUST 1938

[In the summer of 1938 the evident intention of Germany to force a solution in their interests of the problem of the Sudeten Germans, if necessary by war, produced a growing state of crisis. In August President Roosevelt paid a visit to Canada to take part in the dedication of the International Bridge over the St Lawrence at Thousand Islands. On 18 August he received an honorary degree at Queen's University, Kingston, and, on that occasion, made a speech in which he declared that the United States "would not stand idly by" if Canada were threatened. This statement in fact extended the provisions of the Monroe Doctrine to the Dominion of Canada.

Two years later, on 18 August 1940, President Roosevelt met Mr Mackenzie King, the Canadian Prime Minister, in the President's private train at Ogdensburg, near the Canadian border, and there concluded the United States-Canadian Defence Agreement. It was decided to establish immediately a permanent Defence Board of five members from each country to plan the mutual defence of the northern part of the Western Hemisphere.]

To the pleasure of being once more on Canadian soil, where I have passed so many happy hours of my life, there is added to-day a very warm sense of gratitude for being admitted to the fellowship of this ancient and famous university. I am glad to join the brotherhood which Queen's has contributed and is contributing not only to the spiritual leadership for which the college was established, but also to the social and public leadership in the civilized life of Canada.

An American President is precluded by our Constitution from accepting any title from a foreign prince, potentate, or power. Queen's University is not a prince or a potentate, but it is a power. Yet I can say, without constitutional reserve, that the acceptance of the title

which you confer on me to-day would raise no qualms in the august breast of our own Supreme Court.

Civilization is not national—it is international—even though that observation, trite to most of us, is to-day challenged in some parts of the world. Ideas are not limited by territorial borders; they are the common inheritance of all free people. Thought is not anchored in any land, and the profit of education redounds to the equal benefit of the whole world. That is one form of free trade to which the leaders of every opposing political party can subscribe.

In a large sense we in the Americas stand charged to-day with the maintaining of that tradition. When, speaking recently in a similar vein in the Republic of Brazil, I included the Dominion of Canada in the fellowship of the Americas, our South American neighbors gave hearty acclaim. We in the Americas know the sorrow and the wreckage which may follow if the ability of men to understand each other is rooted out from among the nations.

Many of us here to-day know from experience that of all the devastations of war none is more tragic than the destruction which it brings to the processes of men's minds. Truth is denied because emotion pushes it aside. Forbearance is succeeded by bitterness. In that atmosphere human thought cannot advance.

It is impossible not to remember that for years when Canadians and Americans have met they have light-heartedly saluted as North American friends, without thought of dangers from overseas. Yet we are awake to the knowledge that the casual assumption of our greetings in earlier times to-day must become a matter for serious thought.

A few days ago a whisper, fortunately untrue, raced round the world that armies standing over against each other in unhappy array were to be set in motion. In a few short hours the effect of that whisper had been registered in Montreal and New York, in Ottawa and in Washington, in Toronto and in Chicago, in Vancouver and in San Francisco. Your business men and

ours felt it alike; your farmers and ours heard it alike; your young men and ours wondered what effect this might have on their lives.

We in the Americas are no longer a far-away continent, to which the eddies of controversies beyond the seas could bring no interest or no harm. Instead, we in the Americas have become a consideration to every propaganda office and to every general staff beyond the seas. The vast amount of our resources, the vigor of our commerce, and the strength of our men have made us vital factors in world peace whether we choose or not.

Happily, you and we, in friendship and in entire understanding, can look clear-eyed at these possibilities, resolving to leave no pathway unexplored and no technique undeveloped which may, if our hopes are realised, contribute to the peace of the world. Even if those hopes are disappointed, we can assure each other that this hemisphere at least shall remain a strong citadel wherein civilization can flourish unimpaired.

The Dominion of Canada is part of the sisterhood of the British Empire. I give to you assurance that the people of the United States will not stand idly by if domination of Canadian soil is threatened by any other empire.

We as good neighbors are true friends because we maintain our own rights with frankness, because we refuse to accept the twists of secret diplomacy, because we settle our disputes by consultation, and because we discuss our common problems in the spirit of the common good. We seek to be scrupulously fair and helpful not only in our relations with each other but each of us at home in our relations with our own people.

But there is one process which we certainly cannot change and probably ought not to change. This is the feeling which ordinary men and women have about events which they can understand. We cannot prevent our people from having an opinion in regard to wanton brutality, in regard to undemocratic regimentation, in regard to misery inflicted on helpless peoples, or in

regard to violations of accepted individual rights. All that any government, constituted as is yours and mine, can possibly undertake is to help to make sure that the facts are known and fairly stated. No country where thought is free can prevent every fireside and home within its borders from considering the evidence for itself and rendering its own verdict; and the sum total of these conclusions of educated men and women will, in the long run, become the national verdict.

That is what we mean when we say that public opinion ultimately governs policy. It is right and just that this should be the case.

Many of our ancestors came to Canada and the United States because they wished to break away from systems which forbade them to think freely, and their descendants have insisted on the right to know the truth—to argue their problems to a majority decision, and, if they remained unconvinced, to disagree in peace. As a tribute to our likeness in that respect, I note that the Bill of Rights in your country and in mine is substantially the same.

Mr Chancellor, you of Canada who respect the educational tradition of our democratic continent will ever maintain good neighborship in ideas as we in the public service hope and propose to maintain it in the field of government and of foreign relations. My good friend, the Governor General, in receiving an honorary degree in June at that university of Cambridge, Massachusetts, to which Mackenzie King and I both belong, suggested that we cultivate three qualities to keep our foothold in the shifting sands of the present—humility, humanity, and humor. All three of them, imbedded in education, build new spans to re-establish free intercourse throughout the world and bring forth an order in which free nations can live in peace.

46. PRESIDENT ROOSEVELT'S APPEALS TO HITLER DURING THE SUDETEN CRISIS, 1938

[During September 1938 Europe moved to the edge of war. On 15 September Mr Neville Chamberlain met Hitler at Berchtesgaden, and a solution of the problem of the Sudeten German claim to the Sudeten districts in Czechoslovakia appeared possible, but, at the meeting between the two statesmen at Godesberg on 22 and 23 September, new German proposals were produced which Great Britain was unable to recommend to the Government of Czechoslovakia. On 26 September President Roosevelt despatched the first of two appeals to Hitler, pressing for a continuation of negotiations. That evening, at the Sportpalast in Berlin, Hitler declared that Czechoslovakia must surrender the territory demanded on 1 October or he would take it by force. On the next day, 27 September, Hitler answered the President's note, declaring that the Germans had been betrayed at Versailles; that the Sudetenland had always belonged to Germany; that the Czechs had refused to grant the most elementary rights to the Sudeten Germans; and that it was for the Government of Czechoslovakia to decide for peace or war.

On 28 September President Roosevelt sent a second appeal to Hitler, insisting on the need for continued negotiations. It is significant that the publication of this note, to which no reply was sent, was forbidden in Germany until the crisis was over. However, on 29 and 30 September Mr Chamberlain, M. Daladier, Hitler, and Mussolini met at Munich, where it was agreed that Germany should take over the Sudetenland by stages in ten days. The Government of Czechoslovakia was unable to resist.]

•(a) *President Roosevelt's Appeal to Hitler,* 26 September 1938.

The fabric of peace on the Continent of Europe, if not throughout the rest of the world, is in immediate danger. The consequences of its rupture are incalculable.

Should hostilities break out the lives of millions of men, women, and children in every country involved will most certainly be lost under circumstances of unspeakable horror.

The economic system of every country involved is certain to be shattered. The social structure of every country involved may well be completely wrecked.

The United States has no political entanglements. It is caught in no mesh of hatred. Elements of all Europe have formed its civilization.

The supreme desire of the American people is to live in peace. But in the event of a general war they face the fact that no nation can escape some measure of the consequences of such a world catastrophe.

The traditional policy of the United States has been the furtherance of the settlement of international disputes by pacific means. It is my conviction that all people under the threat of war to-day pray that peace may be made before, rather than after, war.

It is imperative that peoples everywhere recall that every civilized nation in the world voluntarily assumed the solemn obligations of the Kellogg-Briand Pact of 1928 to solve controversies only by pacific methods. In addition, most nations are parties to other binding treaties obligating them to preserve peace. Furthermore, all countries have to-day available for such peaceful solution of difficulties which may arise treaties of arbitration and conciliation to which they are parties.

Whatever may be the differences in the controversies at issue and however difficult of pacific settlement they may be, I am persuaded there is no problem so difficult that it cannot be justly solved by the resort to reason rather than by the resort to force.

During the present crisis the people of the United States and their Government have earnestly hoped that the negotiations for the adjustment of the controversy which has now arisen in Europe might reach a successful conclusion.

So long as these negotiations continue, so long will there remain the hope that reason and the spirit of

equity may prevail and that the world may thereby escape the madness of a new resort to war.

On behalf of the 130 millions of people of the United States of America, and for the sake of humanity everywhere, I most earnestly appeal to you not to break off negotiations looking to a peaceful, fair, and constructive settlement of the questions at issue.

I earnestly repeat that so long as negotiations continue, differences may be reconciled. Once they are broken off, reason is banished and force asserts itself.

And force produces no solution for the future good of humanity.

*(b) President Roosevelt's Appeal to Hitler,
28 September 1938.*

I desire to acknowledge Your Excellency's reply to my telegram of 26 September. I was confident that you would coincide in the opinion I expressed regarding the unforeseeable consequences and the incalculable disaster which would result to the entire world from the outbreak of a European war.

The question before the world to-day, Mr Chancellor, is not the question of errors of judgment or of injustices committed in the past. It is the question of the fate of the world to-day and to-morrow. The world asks of us who at this moment are heads of nations the supreme capacity to achieve the destinies of nations without forcing upon them as a price the mutilation and death of millions of citizens.

Resort to force in the Great War failed to bring tranquillity. Victory and defeat were alike sterile. That lesson the world should have learned. For that reason above all others I addressed on 26 September my appeal to Your Excellency and to the President of Czechoslovakia and to the Prime Ministers of Great Britain and France.

The two points I sought to emphasize were, first, that all matters of difference between the German Government and the Czechoslovakian Government

could and should be settled by pacific methods; and, second, that the threatened alternative of the use of force on a scale likely to result in a general war is as unnecessary as it is unjustifiable. It is, therefore, supremely important that negotiations should continue without interruption until a fair and constructive solution is reached.

My conviction on these two points is deepened because responsible statesmen have officially stated that an agreement in principle has already been reached between the Government of the German Reich and the Government of Czechoslovakia, although the precise time, method, and detail of carrying out that agreement remain at issue.

Whatever existing differences may be and whatever their merits may be—and upon them I do not and need not undertake to pass—my appeal was solely that negotiations be continued until a peaceful settlement is found, and that thereby a resort to force be avoided.

Present negotiations still stand open. They can be continued if you will give the word. Should the need for supplementing them become evident, nothing stands in the way of widening their scope into a conference of all the nations directly interested in the present controversy. Such a meeting to be held immediately—in some neutral spot in Europe—would offer the opportunity for this and correlated questions to be solved in a spirit of justice, of fair dealing, and, in all human probability, with greater permanence.

In my considered judgment, and in the light of the experience of this century, continued negotiations remain the only way by which the immediate problem can be disposed of upon any lasting basis.

Should you agree to a solution in this peaceful manner I am convinced that hundreds of millions throughout the world would recognize your action as an outstanding historic service to all humanity.

Allow me to state my unqualified conviction that history and the souls of every man, woman, and child whose lives will be lost in the threatened war

will hold us, and all of us, accountable should we omit any appeal for its prevention.

The Government of the United States has no political involvements in Europe and will assume no obligations in the conduct of the present negotiations. Yet in our own right we recognize our responsibilities as a part of a world of neighbors.

The conscience and the impelling desire of the people of my country demand that the voice of their Government be raised again and yet again to avert and to avoid war.

47. THE DECLARATION OF LIMA

24 DECEMBER 1938

[The Eighth Pan-American Conference was held at Lima (Peru) from 9 to 27 December 1938. Twenty-one States were represented, the United States by Mr Cordell Hull, the Secretary of State. The Conference was concerned chiefly with the problem of German infiltration into South America. The Conference refused to accept the United States proposal for periodic meetings to concert a common policy of defence. The resolution at the time might have been taken to mean much or little, but events were to show before long that President Roosevelt's "good neighbor" policy had borne fruit and that the Solidarity of the Western Hemisphere was not a mere phrase.

On 3 October 1939 the twenty-one Republics adopted the Declaration of Panama, establishing a "safety belt" round the American continent extending 300 miles out to sea, and even to 600 miles at certain points of coastal indentation, in which area all belligerent ships were to be immune from attack. On 29 July 1940, after the collapse of France, these States adopted the Act of Havana. This set up a plan for common action if the possessions of any European country in the New World were threatened owing to its military occupation. In that case the American States would set up a provisional administration to take over the colony as a temporary measure. Means were also adopted

for "fortifying the economy" of the American States, particularly by co-operation in measures to increase the internal consumption of the export surpluses and by strengthening the powers of the Inter-American Economic and Financial Committees.]

The Eighth International Conference of American States

CONSIDERING :

That the peoples of America have achieved spiritual unity through the similarity of their republican institutions, their unshakable will for peace, their profound sentiment of humanity and tolerance, and through their absolute adherence to the principles of international law, of the equal sovereignty of States, and of individual liberty without religious or racial prejudices;

That on the basis of such principles and will, they seek and defend the peace of the continent and work together in the cause of universal concord;

That respect for the personality, sovereignty, and independence of each American State constitutes the essence of international order sustained by continental solidarity, which historically has been expressed and sustained by declarations and treaties in force; and

That the Inter-American Conference for the Maintenance of Peace, held at Buenos Aires, approved on 21 December 1936 the Declaration of the Principles of Inter-American Solidarity and Co-operation, and approved, on 23 December 1936, the Protocol of Non-Intervention,

The Governments of the American States

DECLARE :

First. That they reaffirm their continental solidarity and their purpose to collaborate in the maintenance of the principles upon which the said solidarity is based.

Second. That faithful to the above-mentioned principles and to their absolute sovereignty, they reaffirm their decision to maintain them and to defend them

United States Note to Japan on "New Order" in East 269
against all foreign intervention or activity that may threaten them.

Third. And in case the peace, security, or territorial integrity of any American Republic is thus threatened by acts of any nature that may impair them, they proclaim their common concern and their determination to make effective their solidarity, co-ordinating their respective sovereign wills by means of the procedure of consultation, established by conventions in force and by declarations of the Inter-American Conferences, using the measures which in each case the circumstances may make advisable. It is understood that the Governments of the American Republics will act independently in their individual capacity, recognizing fully their juridical equality as sovereign States.

Fourth. That in order to facilitate the consultations established in this and other American peace instruments, the Ministers for Foreign Affairs of the American Republics, when deemed desirable and at the initiative of any one of them, will meet in their several capitals by rotation and without protocolary character. Each government may, under special circumstances or for special reasons, designate a representative as a substitute for its Minister for Foreign Affairs.

Fifth. This Declaration shall be known as the "Declaration of Lima".

48. UNITED STATES NOTE TO JAPAN ON THE "NEW ORDER" IN THE EAST

31 DECEMBER 1938

[In*July 1937 Japan invaded China and soon showed that she was not prepared to respect American rights in that country or to adhere to her pledges under the Nine-Power Treaty of 1922 (see No. 18). The most famous incident was the sinking of the United States gunboat, *Panay*, on 12 December 1937, during the attack on Nanking.

On 6 October 1938 the United States protested to Japan against her repeated violation of treaty rights, and Japan answered on 18 November that a "new situation" existed in the East which made the principle of the Open Door no longer applicable. A note of 31 December 1938 made clear the attitude of the United States in the face of this claim.

Continued violations of her previous assurances that she would respect America's position led the United States, in July 1939, to give notice that she would abrogate her Commercial Treaty of 1911 with Japan, and it expired on 26 January 1940. On 27 September 1940 Japan entered into an Alliance with Germany and Italy, by which she recognised German and Italian leadership in the "New Order" in Europe, these two Powers recognised her leadership in the "New Order" in Eastern Asia, and the three Powers agreed to assist any one of them if attacked by a State not yet engaged in the European or Asiatic conflicts. However, when Germany attacked Soviet Russia, on 22 June 1941, Japan did not enter the war.

Japan seized the opportunity offered by the collapse of France in the summer of 1940 to secure an agreement allowing her to station troops in Indo-China. In July 1941 Japan occupied Indo-China. On 25 July Great Britain, and on 26 July the United States, ordered the "freezing" of all Japanese assets in these countries. On 15 November 1941 a special Japanese envoy arrived in Washington to continue negotiations, already long drawn out, for a settlement between the two countries. On 26 November the United States despatched a note to the Japanese Government stating her policy in the Far East, and referring to her note of 31 December 1938. On 7 December, while the Japanese envoys were handing to Mr Cordell Hull their Government's reply, refusing the policy of the United States, Japanese aircraft, without declaration of war, bombed American bases in Hawaii and the Philippine Islands. On 8 December 1941 Congress declared that a state of war existed between the United States and Japan.]

Text of a note which the American Ambassador to Japan, Mr Joseph C. Grew, communicated, under instruction, to the Japanese Minister for Foreign Affairs, His Excellency Mr Hachiro Arita, on 31 December 1938.

The Government of the United States has received and has given full consideration to the reply of the

Japanese Government of 18 November to this Government's note of 6 October on the subject of American rights and interests in China.

In the light of facts and experience the Government of the United States is impelled to reaffirm its previously expressed opinion that imposition of restrictions upon the movements and activities of American nationals who are engaged in philanthropic, educational, and commercial endeavors in China has placed and will, if continued, increasingly place Japanese interests in a preferred position and is, therefore, unquestionably discriminatory, in its effect, against legitimate American interests. Further, with reference to such matters as exchange control, compulsory currency circulation, tariff revision, and monopolistic promotion in certain areas of China, the plans and practices of the Japanese authorities imply an assumption on the part of those authorities that the Japanese Government or the regimes established and maintained in China by Japanese armed forces are entitled to act in China in a capacity such as flows from rights of sovereignty and, further, in so acting to disregard and even to declare non-existent or abrogated the established rights and interests of other countries, including the United States.

The Government of the United States expresses its conviction that the restrictions and measures under reference not only are unjust and unwarranted, but are counter to the provisions of several binding international agreements, voluntarily entered into, to which both Japan and the United States, and in some cases other countries, are parties.

In the concluding portion of its note under reference, the Japanese Government states that it is firmly convinced that "in the face of the new situation, fast developing in East Asia, any attempt to apply to the conditions of to-day and to-morrow inapplicable ideas and principles of the past neither would contribute toward the establishment of a real peace in East Asia nor solve the immediate issues," and that "as long as these

points are understood, Japan has not the slightest inclination to oppose the participation of the United States and other Powers in the great work of reconstructing East Asia along all lines of industry and trade."

The Government of the United States in its note of 6 October requested, in view of the oft-reiterated assurances proffered by the Government of Japan of its intention to observe the principle of equality of opportunity in its relations with China, and in view of Japan's treaty obligations so to do, that the Government of Japan abide by these obligations and carry out these assurances in practice. The Japanese Government in its reply appears to affirm that it is its intention to make its observance of that principle conditional upon an understanding by the American Government and by other governments of a "new situation" and a "new order" in the Far East as envisaged and fostered by Japanese authorities.

Treaties which bear upon the situation in the Far East have within them provisions relating to a number of subjects. In the making of those treaties there was a process among the parties to them of give and take. Toward making possible the carrying out of some of their provisions, others among their provisions were formulated and agreed upon: toward gaining for itself the advantage of security in regard to certain matters, each of the parties committed itself to pledges of self-denial in regard to certain other matters. The various provisions agreed upon may be said to have constituted collectively an arrangement for safeguarding, for the benefit of all, the correlated principles on the one hand of national integrity and on the other hand of equality of economic opportunity. Experience has shown that impairment of the former of these principles is followed almost invariably by disregard of the latter. Whenever any government begins to exercise political authority in areas beyond the limits of its lawful jurisdiction there develops inevitably a situation in which the nationals of that government demand and are accorded, at the hands of their government, preferred treatment, where-

upon equality of opportunity ceases to exist, and discriminatory practices, productive of friction, prevail.

The admonition that enjoyment by the nationals of the United States of non-discriminatory treatment in China—a general and well-established right—is henceforth to be contingent upon an admission by the Government of the United States of the validity of the conception of Japanese authorities of a "new situation" and a "new order" in East Asia, is, in the opinion of this Government, highly paradoxical.

This country's adherence to and its advocacy of the principle of equality of opportunity do not flow solely from a desire to obtain the commercial benefits which naturally result from the carrying out of that principle. They flow from a firm conviction that observance of that principle leads to economic and political stability, which are conducive both to the internal well-being of nations and to mutually beneficial and peaceful relationships between and among nations; from a firm conviction that failure to observe that principle breeds international friction and ill-will, with consequences injurious to all countries, including in particular those countries which fail to observe it; and from an equally firm conviction that observance of that principle promotes the opening of trade channels, thereby making available the markets, the raw materials, and the manufactured products of the community of nations on a mutually and reciprocally beneficial basis.

The principle of equality of economic opportunity is, moreover, one to which over a long period and on many occasions the Japanese Government has given definite approval. It is one to the observance of which the Japanese Government has committed itself in various international agreements and understandings. It is one upon observance of which by other nations the Japanese Government has of its own accord and upon its own initiative frequently insisted. It is one to which the Japanese Government has repeatedly during recent months declared itself committed.

The people and the Government of the United States

could not assent to the establishment, at the instance of and for the special purposes of any third country, of a regime which would arbitrarily deprive them of the long-established rights of equal opportunity and fair treatment which are legally and justly theirs along with those of other nations.

Fundamental principles, such as the principle of equality of opportunity, which have long been regarded as inherently wise and just, which have been widely adopted and adhered to, and which are general in their application, are not subject to nullification by a unilateral affirmation.

With regard to the implication in the Japanese Government's note that the "conditions of to-day and to-morrow" in the Far East call for a revision of the ideas and principles of the past, this Government desires to recall to the Japanese Government its position on the subject of revision of agreements.

This Government had occasion in the course of a communication delivered to the Japanese Government on 29 April 1934 to express its opinion that "treaties can lawfully be modified or be terminated, but only by processes prescribed or recognized or agreed upon by the parties to them."

In the same communication this Government also said, "In the opinion of the American people and the American Government no nation can, without the assent of the other nations concerned, rightfully endeavor to make conclusive its will in situations where there are involved the rights, the obligations, and the legitimate interests of other sovereign States." . . .

In an official and public statement on 16 July 1937 the Secretary of State of the United States declared that this Government advocates "adjustment of problems in international relations by processes of peaceful negotiation and agreement."

At various times during recent decades various Powers, among which have been Japan and the United States, have had occasion to communicate and to confer with regard to situations and problems in the Far East:

In the conducting of correspondence and of conferences relating to these matters, the parties involved have invariably taken into consideration past and present facts and they have not failed to perceive the possibility and the desirability of changes in the situation. In the making of treaties, they have drawn up and have agreed upon provisions intended to facilitate advantageous developments and at the same time to obviate and avert the arising of friction between and among the various Powers which, having interests in the region or regions under reference, were and would be concerned.

In the light of these facts, and with reference especially to the purpose and the character of the treaty provisions from time to time solemnly agreed upon for the very definite purposes indicated, the Government of the United States deprecates the fact that one of the parties to these agreements has chosen to embark—as indicated both by action of its agents and by official statements of its authorities—upon a course directed toward the arbitrary creation by that Power, by methods of its own selection, regardless of treaty pledges and the established rights of other Powers concerned, of a "new order" in the Far East. Whatever may be the changes which have taken place in the situation in the Far East and whatever may be the situation now, these matters are of no less interest and concern to the American Government than have been the situations which have prevailed there in the past, and such changes as may henceforth take place there, changes which may enter into the producing of a "new situation" and a "new order," are and will be of like concern to this Government. This Government is well aware that the situation has changed. This Government is also well aware that many of the changes have been brought about by action of Japan. This Government does not admit, however, that there is need or warrant for any one Power to take upon itself to prescribe what shall be the terms and conditions of a "new order" in areas not under its sovereignty and to constitute itself the repository of authority and the agent of destiny in regard thereto.

It is known to all the world that various of the parties to treaties concluded for the purpose of regulating contacts in the Far East and avoiding friction therein and therefrom—which treaties contained, for those purposes, various restrictive provisions—have from time to time, and by processes of negotiation and agreement, contributed, in the light of changed situations, toward the removal of restrictions and toward the bringing about of further developments which would warrant, in the light of further changes in the situation, further removals of restrictions. By such methods and processes, early restrictions upon the tariff autonomy of all countries in the Far East were removed. By such methods and processes, the rights of extraterritorial jurisdiction once enjoyed by Occidental countries in relations with countries in the Far East have been given up in relations with all of those countries except China; and in the years immediately preceding and including the year 1931, countries which still possess those rights in China, including the United States, were actively engaged in negotiations—far advanced—looking toward surrender of those rights. All discerning and impartial observers have realized that the United States and other of the “treaty Powers” have not, during recent decades, clung tenaciously to their so-called “special” rights and privileges in countries of the Far East, but on the contrary have steadily encouraged the development in those countries of institutions and practices in the presence of which such rights and privileges may safely and readily be given up; and all observers have seen those rights and privileges gradually being surrendered voluntarily, through agreement, by the Powers which have possessed them. On one point only has the Government of the United States, along with several other governments, insisted: namely, that new situations must have developed to a point warranting the removal of “special” safeguarding restrictions and that the removals be effected by orderly processes.

The Government of the United States has at all times regarded agreements as susceptible of alteration, but it

has always insisted that alterations can rightfully be made only by orderly processes of negotiation and agreement among the parties thereto.

The Japanese Government has upon numerous occasions expressed itself as holding similar views.

The United States has in its international relations rights and obligations which derive from international law and rights and obligations which rest upon treaty provisions. Of those which rest on treaty provisions, its rights and obligations in and with regard to China rest in part upon provisions in treaties between the United States and China, and in part upon provisions in treaties between the United States and several other Powers, including both China and Japan. These treaties were concluded in good faith for the purpose of safeguarding and promoting the interests not of one only, but of all their signatories. The people and the Government of the United States cannot assent to the abrogation of any of this country's rights or obligations by the arbitrary action of agents or authorities of any other country.

The Government of the United States has, however, always been prepared, and is now, to give due and ample consideration to any proposals based on justice and reason which envisage the resolving of problems in a manner duly considerate of the rights and obligations of all parties directly concerned by processes of free negotiation and new commitment by and among all of the parties so concerned. There has been and there continues to be opportunity for the Japanese Government to put forward such proposals. This Government has been and it continues to be willing to discuss such proposals, if and when put forward, with representatives of the other Powers, including Japan and China, whose rights and interests are involved, at whatever time and in whatever place may be commonly agreed upon.

Meanwhile, this Government reserves all rights of the United States as they exist and does not give assent to any impairment of any of those rights.

49. PRESIDENT ROOSEVELT'S APPEAL TO HITLER

14 APRIL 1939

[On 15 March 1939 the Germans seized Czechoslovakia. Notes of protest from the British, French, and Soviet Governments were rejected. On 21 March the Germans seized Memel from Lithuania. On 31 March Great Britain gave Poland a guarantee against aggression. On 7 April Italian troops landed in Albania, and on 13 April the British and French Governments gave guarantees to Rumania. The European situation was intensely critical when President Roosevelt, on 14 April, took a bold initiative by sending messages to Hitler and Mussolini, in which he urged them to give a guarantee that for ten or even twenty-five years ahead they would not attack or invade the territories of twenty-five nations, which he named. If such a guarantee were given, he promised the participation of the United States in discussions on disarmament and international trade.

Hitler answered the President's note in the course of his long speech before the Reichstag on 28 April. He declared that since 1919 there had been no fewer than fourteen wars, in none of which Germany had been engaged, and that the United States since 1918 had taken part in six military interventions. To the President's reference to three nations in Europe and one in Africa which had seen their independent existence terminated, he retorted that he did not know to which European nations the President referred. He asked him to name specifically any States which were threatened so that he might refute the charge. He referred mockingly to the President's list of States to be guaranteed, but he agreed to give such an assurance, on a basis of reciprocity, to any State which itself addressed a request to Germany for such a mutual guarantee. An appeal for disarmament, he declared, should not be addressed to Germany, but to other nations, and the United States should begin by removing her own barriers to free trade. He ended by saying that while he quite understood that the size and wealth of the United States allowed Mr Roosevelt to be responsible for the history of the whole world and of all nations, he was himself placed in a more modest and restricted sphere.

✓ Soon afterwards Germany offered to conclude non-

President Roosevelt's Appeal to Hitler, 14 April 1939 279
aggression pacts with Denmark, Norway, Sweden, and Finland. The Government of Denmark alone accepted the proposal, and a Non-Aggression Pact between Germany and Denmark was signed on 31 May 1939. On 18 April 1940 German troops occupied Denmark without warning.]

THE WHITE HOUSE,
14 April 1939.

His Excellency Adolf Hitler, Chancellor of the German Reich.

You realize, I am sure, that throughout the world hundreds of millions of human beings are living to-day in constant fear of a new war or even a series of wars.

The existence of this fear--and the possibility of such a conflict--is of definite concern to the people of the United States for whom I speak, as it must also be to the peoples of the other nations of the entire Western Hemisphere. All of them know that any major war, even if it were to be confined to other continents, must bear heavily on them during its continuance and also for generations to come.

Because of the fact that after the acute tension in which the world has been living during the past few weeks there would seem to be at least a momentary relaxation--because no troops are at this moment on the march--this may be an opportune moment for me to send you this message.

On a previous occasion I have addressed you in behalf of the settlement of political, economic, and social problems by peaceful methods and without resort to arms.

But the tide of events seems to have reverted to the threat of arms. If such threats continue, it seems inevitable that much of the world must become involved in common ruin. All the world, victor nations, vanquished nations, and neutral nations will suffer. I refuse to believe that the world is, of necessity, such a prisoner of destiny. On the contrary, it is clear that the leaders of great nations have it in their power to liberate their peoples from the disaster that impends. It is equally

clear that in their own minds and in their hearts the peoples themselves desire that their fears be ended.

It is, however, unfortunately necessary to take cognizance of recent facts.

Three nations in Europe and one in Africa have seen their independent existence terminated. A vast territory in another independent nation of the Far East has been occupied by a neighboring State. Reports, which we trust are not true, insist that further acts of aggression are contemplated against still other independent nations. Plainly the world is moving toward the moment when this situation must end in catastrophe unless a more rational way of guiding events is found.

You have repeatedly asserted that you and the German people have no desire for war. If this is true there need be no war.

Nothing can persuade the peoples of the earth that any governing power has any right or need to inflict the consequences of war on its own or any other people save in the cause of self-evident home defense.

In making this statement we as Americans speak not through selfishness or fear or weakness. If we speak now it is with the voice of strength and with friendship for mankind. It is still clear to me that international problems can be solved at the council table.

It is therefore no answer to the plea for peaceful discussion for one side to plead that unless they receive assurances beforehand that the verdict will be theirs, they will not lay aside their arms. In conference rooms, as in courts, it is necessary that both sides enter upon the discussion in good faith, assuming that substantial justice will accrue to both; and it is customary that they leave their arms outside the room where they confer.

I am convinced that the cause of world peace would be greatly advanced if the nations of the world were to obtain a frank statement relating to the present and future policy of governments.

Because the United States, as one of the nations of the Western Hemisphere, is not involved in the immediate controversies which have arisen in Europe, I

trust that you may be willing to make such a statement of policy to me as the head of a nation far removed from Europe in order that I, acting only with the responsibility and obligation of a friendly intermediary, may communicate such declaration to other nations now apprehensive as to the course which the policy of your Government may take.

Are you willing to give assurance that your armed forces will not attack or invade the territory or possessions of the following independent nations: Finland, Estonia, Latvia, Lithuania, Sweden, Norway, Denmark, The Netherlands, Belgium, Great Britain and Ireland, France, Portugal, Spain, Switzerland, Liechtenstein, Luxemburg, Poland, Hungary, Rumania, Yugoslavia, Russia, Bulgaria, Greece, Turkey, Iraq, the Arabias, Syria, Palestine, Egypt, and Iran.

Such an assurance clearly must apply not only to the present day but also to a future sufficiently long to give every opportunity to work by peaceful methods for a more permanent peace. I therefore suggest that you construe the word "future" to apply to a minimum period of assured non-aggression—ten years at the least—a quarter of a century, if we dare look that far ahead.

If such assurance is given by your Government, I will immediately transmit it to the governments of the nations I have named and I will simultaneously inquire whether, as I am reasonably sure, each of the nations enumerated above will in turn give like assurance for transmission to you.

Reciprocal assurances such as I have outlined will bring to the world an immediate measure of relief.

I propose that if it is given, two essential problems shall promptly be discussed in the resulting peaceful surroundings, and in those discussions the Government of the United States will gladly take part.

The discussions which I have in mind relate to the most effective and immediate manner through which the peoples of the world can obtain progressive relief from the crushing burden of armament which is each day bringing them more closely to the brink of economic

disaster. Simultaneously the Government of the United States would be prepared to take part in discussions looking towards the most practical manner of opening up avenues of international trade to the end that every nation of the earth may be enabled to buy and sell on equal terms in the world market as well as to possess assurance of obtaining the materials and products of peaceful economic life.

At the same time, those governments other than the United States which are directly interested could undertake such political discussions as they may consider necessary or desirable.

We recognise complex world problems which affect all humanity, but we know that study and discussion of them must be held in an atmosphere of peace. Such an atmosphere of peace cannot exist if negotiations are overshadowed by the threat of force or by the fear of war.

I think you will not misunderstand the spirit of frankness in which I send you this message. Heads of great governments in this hour are literally responsible for the fate of humanity in the coming years. They cannot fail to hear the prayers of their peoples to be protected from the foreseeable chaos of war. History will hold them accountable for the lives and the happiness of all—even unto the least.

I hope that your answer will make it possible for humanity to lose fear and regain security for many years to come.

A similar message is being addressed to the Chief of the Italian Government.

FRANKLIN D. ROOSEVELT.

50. PRESIDENT ROOSEVELT'S APPEALS FOR PEACE IN THE DANZIG CRISIS

1939

[During August 1939 it became clear that Hitler was prepared to press the German claims to Danzig, if necessary, to a war. On 23 August, President Roosevelt sent an appeal to the King of Italy to intervene in the dispute in the cause of peace. The King of Italy replied on 30 August, thanking the President and stating, "As is known to all, we have done and are doing everything possible to bring about peace with justice." On 24 August, President Roosevelt sent messages to Hitler and the President of Poland, urging them to attempt to settle their differences by direct negotiation, by accepting an impartial arbitration, or by accepting the mediation of one of the American Republics. On 25 August the Polish President replied stating that the Government was always ready for "direct talks" with Germany and that they considered that "the method of conciliation through the intermediary of a disinterested and impartial third party is a just method of resolving differences which have been created between nations." On the same day President Roosevelt sent a second appeal to Hitler, informing him of the Polish reply and begging him also to respond. Hitler answered that he had "left nothing untried for the purpose of settling the dispute in a friendly manner" and that at the last hour he had accepted the British offer of mediation.

On 1 September President Roosevelt appealed to the belligerents to refrain from the aerial bombing of open towns. Hitler answered that he had already announced his support of this principle and that he had given orders to the German Air Force only to bomb military objectives. The Polish Government accepted the proposal and pointed out that within the first few hours of war there were already losses among the civilian population as a result of attacks from the air.]

(a) *President Roosevelt's Appeal to the King of Italy,*
23 August 1939.

*From the President of the United States of America to the
King of Italy.*

Again a crisis in world affairs makes clear the responsibility of heads of nations for the fate of their own people, and, indeed, of humanity itself.

It is because of the traditional accord between Italy and the United States and the ties of consanguinity between the millions of our citizens that I feel I can address your Majesty on behalf of the maintenance of world peace.

It is my belief, and that of the American people, that your Majesty and your Majesty's Government can greatly influence the averting of an outbreak of war.

Any general war would cause to suffer all the nations, whether belligerent or neutral, whether victors or vanquished, and would clearly bring devastation to the peoples and perhaps the Governments of some nations most directly concerned.

The friends of the Italian people, and among them the American people, could only regard with grief the destruction of the great achievements which European nations and the Italian nation in particular have attained in the past generation.

We in America, having welded a homogeneous nation out of many nationalities, often find it difficult to visualize the animosities which so often have created a crisis among nations of Europe which are smaller than ours in population and territory, but we accept the fact that these nations have an absolute right to maintain their national independence if they so desire.

If that is a sound doctrine, then it must apply to the weaker nations as well as the stronger. The acceptance of this means peace, because fear of aggression ends.

The alternative, which means of necessity efforts by the strong to dominate the weak, will lead not only to war, but to long future years of oppression on the part

of the victors and rebellion on the part of the vanquished—so history teaches us.

On the 14th April last I suggested, in essence, an understanding that no armed forces should attack or invade the territory of any other independent nation, and that, this being assured, discussions should be undertaken to seek progressive relief from the burden of armaments and open the avenue of international trade, including the sources of raw materials necessary for the peaceful economic life of each nation.

I said that in these discussions the United States would gladly take part, and such peaceful conversations would make it wholly possible for Governments other than the United States to enter into peaceful discussions of the political and territorial problems in which they are directly concerned.

Were it possible for your Majesty's Government to formulate proposals for a pacific solution of the present crisis along these lines, you are assured of the earnest sympathy of the United States.

The Governments of Italy and the United States can to-day advance those ideals of Christianity which of late seem so often to have been obscured.

The unheard voices of countless millions of human beings ask that they shall not be vainly sacrificed again.

*(b) President Roosevelt's First Appeal to Hitler,
24 August 1939.*

In the message which I sent you on the 14th April, I stated that it appeared to be that the leaders of great nations had it in their power to liberate their peoples from the disaster that impended, but that, unless the effort were immediately made, with good will on all sides, to find a peaceful and constructive solution to existing controversies, the crisis which the world was confronting must end in catastrophe. To-day that catastrophe appears to be very near—at hand, indeed.

To the message which I sent you last April I have received no reply, but because my confident belief that

the cause of world peace—which is the cause of humanity itself—rises above all other considerations I am again addressing myself to you, with the hope that the war which impends and the consequent disaster to all peoples may yet be averted.

I therefore urge with all earnestness—and I am likewise urging the President of the Republic of Poland—that the Governments of Germany and Poland agree by common accord to refrain from any positive act of hostility for a reasonable stipulated period, and that they agree, likewise by common accord, to solve the controversies which have arisen between them by one of the three following methods:—

First, by direct negotiation;

Second, by the submission of these controversies to an impartial arbitration in which they can both have confidence; or

Third, that they agree to the solution of these controversies through the procedure of conciliation, selecting as a conciliator or moderator a national of one of the American Republics, which are all of them free from any connexion with, or participation in, European political affairs.

Both Poland and Germany being sovereign Governments, it is understood, of course, that, upon resort to any one of the alternatives I suggest, each nation will agree to accord complete respect to the independence and territorial integrity of the other.

The people of the United States are as one in their opposition to policies of military conquest and domination. They are as one in rejecting the thesis that any ruler or any people possess the right to achieve their ends or objectives through the taking of action which will plunge countless of millions into war, and which will bring distress and suffering to every nation of the world, belligerent and neutral, when such ends and objectives, so far as they are just and reasonable, can be satisfied through the processes of peaceful negotiation or by resort to judicial arbitration.

I appeal to you in the name of the people of the

United States, and I believe in the name of peace-loving men and women everywhere, to agree to a solution of the controversies existing between your Government and that of Poland through the adoption of one of the alternative methods I have proposed.

I need hardly reiterate that should the Governments of Germany and Poland be willing to solve their differences in the peaceful manner suggested, the Government of the United States still stands prepared to contribute its share to the solution of the problems which are endangering world peace in the form set forth in my message of the 14th April.

*(c) President Roosevelt's Second Appeal to Hitler,
25 August 1939.*

I have this hour received from the President of Poland a reply to the message which I addressed to your Excellency and to him last night.

[The text of President Moscicki's reply is then given. President Roosevelt continues as follows]:—

Your Excellency has repeatedly publicly stated that the aims and objects sought by the German Reich were just and reasonable.

In his reply to my message the President of Poland has made it plain that the Polish Government is willing, upon the basis set forth in my message, to agree to solve the controversy which has arisen between the Republic of Poland and the German Reich by direct negotiation or the process of conciliation.

Countless human lives can yet be saved, and hope may still be restored that the nations of the modern world may even now construct the foundation for a peaceful and happier relationship, if you and the Government of the German Reich will agree to the pacific means of settlement accepted by the Government of Poland. All the world prays that Germany, too, will accept.

(d) *President Roosevelt's Appeal to the Belligerents to
refrain from the Bombing of Open Towns,*
1 September 1939.

The ruthless bombing from the air of civilians in unfortified centres of population during the course of the hostilities which have raged in various quarters of the earth in the past few years, which have resulted in the maiming and death of thousands of defenceless women and children, has profoundly shocked the conscience of humanity.

If resort is had to this sort of inhuman barbarism during the period of tragic conflagration with which the world is now confronted, hundreds of thousands of innocent human beings, who have no responsibility for, and who are not even remotely participating in, the hostilities which have broken out, now will lose their lives.

I am therefore addressing this urgent appeal to every Government which may be engaged in hostilities, publicly to affirm its determination that its armed forces shall in no event and under no circumstances undertake bombardment from the air of civilian populations or unfortified cities, upon the understanding that the same rules of warfare will be scrupulously observed by all their opponents.

51. PRESIDENT ROOSEVELT'S APPEAL FOR NEUTRALITY

3 SEPTEMBER 1939

[President Roosevelt's broadcast address to the nation on 3 September 1939, the day on which Great Britain and France declared war on Germany, should be compared with Wilson's appeal for neutrality on 19 August 1914 (No. 1). The Proclamation of United States Neutrality was issued on 5 September.]

To-night my single duty is to speak to the whole of America.

Until 4.30 this morning I had hoped against hope that some miracle would prevent a devastating war in Europe and bring to an end the invasion of Poland by Germany.

For four long years a succession of actual wars and constant crises have shaken the entire world and have threatened in each case to bring on the gigantic conflict which is to-day unhappily a fact.

It is right that I should recall to your minds the consistent and at times successful efforts of your Government in these crises to throw the full weight of the United States into the cause of peace. In spite of spreading wars, I think that we have every right and every reason to maintain as a national policy the fundamental moralities, the teachings of religion, and the continuation of efforts to restore peace—for some day, though the time may be distant, we can be of even greater help to a crippled humanity.

It is right, too, to point out that the unfortunate events of these recent years have been based on the use of force or the threat of force. And it seems to me clear, even at the outbreak of this great war, that the influence of America should be consistent in seeking for humanity a final peace which will eliminate, as far as it is possible to do so, the continued use of force between nations.

It is, of course, impossible to predict the future. I have my constant stream of information from American representatives and other sources throughout the world. You, the people of this country, are receiving news through your radios and your newspapers at every hour of the day.

You are, I believe, the most enlightened and the best informed people in all the world at this moment. You are subjected to no censorship of news; and I want to add that your Government has no information which it has any thought of withholding from you.

At the same time, as I told my press conference on Friday, it is of the highest importance that the press

and the radio use the utmost caution to discriminate between actual verified fact on the one hand and mere rumor on the other.

I can add to that by saying that I hope the people of this country will also discriminate most carefully between news and rumor. Do not believe of necessity everything you hear or read. Check up on it first.

You must master at the outset a simple but unalterable fact in modern foreign relations. When peace has been broken anywhere, peace of all countries everywhere is in danger.

It is easy for you and me to shrug our shoulders and say that conflicts taking place thousands of miles from the continental United States, and, indeed, the whole American hemisphere, do not seriously affect the Americas—and that all the United States has to do is to ignore them and go about our own business. Passionately though we may desire detachment, we are forced to realize that every word that comes through the air, every ship that sails the sea, every battle that is fought does affect the American future.

Let no man or woman thoughtlessly or falsely talk of America sending its armies to European fields. At this moment there is being prepared a proclamation of American neutrality. This would have been done even if there had been no neutrality statute on the books, for this proclamation is in accordance with international law and with American policy.

This will be followed by a proclamation required by the existing Neutrality Act. I trust that in the days to come our neutrality can be made a true neutrality.

It is of the utmost importance that the people of this country, with the best information in the world, think things through. The most dangerous enemies of American peace are those who, without well-rounded information on the whole broad subject of the past, the present, and the future, undertake to speak with authority, to talk in terms of glittering generalities, to give to the nation assurances or prophecies which are of little present or future value.

I myself cannot and do not prophesy the course of events abroad—and the reason is that because I have of necessity such a complete picture of what is going on in every part of the world, I do not dare to do so. And the other reason is that I think it is honest for me to be honest with the people of the United States.

I cannot prophesy the immediate economic effect of this new war on our nation, but I do say that no American has the moral right to profiteer at the expense either of his fellow-citizens or of the men, women, and children who are living and dying in the midst of war in Europe.

Some things we do know. Most of us in the United States believe in spiritual values. Most of us, regardless of what church we belong to, believe in the spirit of the New Testament—a great teaching which opposes itself to the use of force, of armed force, of marching armies and falling bombs. The overwhelming masses of our people seek peace—peace at home, and the kind of peace in other lands which will not jeopardize peace at home.

We have certain ideas and ideals of national safety, and we must act to preserve that safety to-day and to preserve the safety of our children in future years.

That safety is and will be bound up with the safety of the Western Hemisphere and of the seas adjacent thereto. We ask to keep war from our firesides by keeping war from coming to the Americas. For that we have historic precedent that goes back to the days of the administration of President George Washington. It is serious enough and tragic enough to every American family in every State in the Union to live in a world that is torn by wars on other continents. To-day they affect every American home. It is our national duty to use every effort to keep them out of the Americas.

And at this time let me make the simple plea that partisanship and selfishness be adjourned, and that national unity be the thought that underlies all others.

This nation will remain a neutral nation, but I cannot ask that every American remain neutral in thought as well. Even a neutral has a right to take account of

facts. Even a neutral cannot be asked to close his mind or his conscience.

I have said not once but many times that I have seen war and that I hate war. I say that again and again.

I hope the United States will keep out of this war. I believe that it will. And I give you assurances that every effort of your Government will be directed toward that end.

As long as it remains within my power to prevent, there will be no blackout of peace in the United States.

APPENDIX

CLAUSES IN THE CONSTITUTION OF THE
UNITED STATES AND AMENDMENTS
REFERRED TO IN THE DOCUMENTS.

ARTICLE I

SECTION 4

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

ARTICLE I

SECTION 8

(The General Welfare Clause.)

The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.

ARTICLE I

SECTION 8

(The Commerce Clause)

The Congress shall have Power . . . to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

ARTICLE I

SECTION 10

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, *ex post facto* Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

ARTICLE VI

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;

or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT V

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT XIV

SECTION 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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